

THE EPPO/OLAF

VI

Compendium of National Procedures

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

Pierre Hauck, Jan-Martin Schneider, Jiří Jelínek and Tereza Ottová

Czech Republic



λογος

λογος

The EPPO/OLAF Compendium of National Procedures
Volume VI – Czech Republic

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 VI – Czech Republic

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

University of Giessen

Dr. Jan-Martin Schneider

University of Giessen

Prof. JUDr. Jiří Jelínek CSc.

University of Finance and Administration / Vysoká škola finanční a správní

Tereza Ottová

Charles University / Univerzita Karlova

Assisted by

Nur Sena Karakocaoğlu
and Alastair Alexander Laird

Pierre Hauck
Jan-Martin Schneider
Jiří Jelínek
Tereza Ottová

The EPPO/OLAF Compendium of National Procedures: Czech Republic

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 volume has been peer-reviewed by two independent academic experts.



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 2026
ISBN 978-3-8325-5856-7

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, LLM (Sussex), is a Professor of Criminal Law at the Justus Liebig University of Giessen. JUDr Jiří Jelínek, CSc., was a Professor of Criminal Law at Charles University in Prague and is a Professor at the University of Finance and Administration in Prague. Dr Jan-Martin Schneider, Nur Sena Karakocaoğlu, and Alastair Alexander Laird are research assistants at the Justus Liebig University of Giessen. Tereza Ottová is a research assistant at the Faculty of Law, Charles University in Prague.

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 Șandru & 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 Acknowledgements

Every year, millions of euros of taxpayers' money are lost to fraud targetting the European Union budget. Combating such fraud has been a fundamental aspect of safeguarding the Union's financial interests for decades and remains a critical priority today. Over the years, a diverse range of political and legal measures has been implemented to address this persistent challenge.

Currently, the protection of the Union's financial interests through the prevention and prosecution of fraud is carried out not only by national judicial authorities but also, to a considerable extent, by the European Union's dedicated investigative institutions, namely the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF).

These two authorities operate under their respective EU regulations, both of which envisage a reliance on and alignment with the national legal framework governing the conduct of investigations. This applies to the EPPO framework as a whole, given that Article 30(1) and (4) EPPO Regulation refers either to powers that must be established at the national level (paragraph 1) or to those already existing under national law (paragraph 4). Similarly, OLAF's authority to carry out so-called external investigations, which is particularly significant when an economic operator refuses to cooperate, is also grounded in national law rather than exclusively Union law. In such cases, national legal provisions form the basis for the investigation (cf. Art 3(6) of the OLAF Regulation).

However, these references to national law are not sufficient; the challenges of applying the law are only just beginning. Knowledge of national legal provisions is typically confined to those intimately familiar with the respective national legal system, a group that is exceedingly small within EU authorities. The investigative bodies in question are composed of personnel from a wide variety of Member States, which inherently limits their familiarity with specific national frameworks. To address this, both authorities have implemented specific mechanisms – the EDPs within the EPPO and the AFCOS for OLAF – to facilitate the transfer of national legal competence. Nevertheless, national investigative procedural law often remains an enigma, both in terms of criminal procedure and administrative law, compounded by the significant language barrier that threatens to become insurmountable when seeking access to the legal systems of other member states.

This publication series aims to address these deficiencies. It provides an overview of the criminal procedure and administrative investigation laws of all 27 Member States in English, with the relevant provisions also available in the language of the respective Member State. By doing so, it provides straightforward access to the procedural rules of foreign legal systems, which are critical for EU investigative work. Moreover, this

Acknowledgements

analysis goes further by offering an explanation of these national rules, presented bilingually, from a reliable source – namely, national experts. In this way, the series creates a comprehensive resource that ensures both access to and understanding of foreign legal frameworks in the context of criminal and administrative fraud investigations.

The editors extend their gratitude to the European Commission for its generous support of the research underpinning this work through funding provided by the EU's Hercule III programme. They also wish to thank Justus Liebig University of Giessen for its substantial contribution to the open-access publication of this work, made possible through its Open Access Publication Fund.

Our sincere thanks go to our team at the University of Giessen, particularly to Nur Sena Karakocaoğlu and Alastair Laird, who have shouldered the primary responsibilities. Julian Doerk, Felina Frkic Wegener, Maike Kappes, Aleksandra Joachimiak and Sophie Meyer have provided invaluable support through a wide range of research and formatting tasks. Corinna Haas and Vanessa Runge have accompanied the project from the outset, consistently offering their expertise and attention to detail, which has been instrumental in guiding us through the work's various stages and ensuring its success from start to finish.

The project's success was also due to the excellent third-party funding administration by Dr Christian Maarten Veldman, Anja Daßler and Jochen Stein from Justus Liebig University, who relieved us of much of the administrative burden.

Last but not least, we extend our gratitude to the outstanding supervision and support provided by Volkhard Buchholtz, the publisher and Hannah Kropla, the production coordinator at Logos Verlag in Berlin, for everything it takes to bring a book to life.

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

Giessen, Germany, December 2024

Pierre Hauck & Jan-Martin Schneider

Recommended citation:

The recommended citation for the entire work is always “Hauck/Schneider/Jelínek/Ottová, EPPO/OLAF CNP, Vol. VI – Czech Republic, p., marginal number”. Where reference is made to the parts contributed solely by national experts, the citation should be “Jelínek/Ottová, in: Hauck/Schneider/Jelínek/Ottová, EPPO/OLAF CNP, Vol. VI – Czech Republic, Part A or Introduction to Part B, pp. 33–71 or pp. 73–77, marginal number”.



Executive Summary: This volume constitutes a detailed inquiry into the interplay between Union investigative mechanisms – principally those of the European Public Prosecutor’s Office (EPPO) and the European Anti-Fraud Office (OLAF) – and the domestic legal framework of the Czech Republic. Funded under the auspices of the European Union’s Hercule III programme, the work is conceived as both a reference instrument and a conceptual guide to the procedural architecture governing the protection of the Union’s financial interests (PIF offences) within a national context.

The introductory part (Part A) delineates the structure of the Czech legal and institutional environment insofar as it is relevant to EPPO and OLAF activity. It surveys pertinent case law – both domestic and European (CJEU and ECtHR) – and sets out the principal statutes, authorities and procedural frameworks. Particular attention is paid to the configuration and jurisdictional reach of criminal justice institutions and to the practical operation of national law in the prosecution of fraud and related offences affecting the EU budget.

Part B offers a sustained analysis of the EPPO’s operation under Czech law, engaging with the legal particularities that arise when transposing the EPPO Regulation into the domestic procedural setting. It discusses the commencement of investigations, the rights of suspects and accused persons, evidentiary thresholds and investigatory powers, including their constitutional and statutory constraints. The treatment of PIF offences combines doctrinal exposition with practical illustration, including selected case studies on fraudulent conduct involving EU funds. The commentary further draws attention to the inherent tensions within the Czech model of pre-trial proceedings – marked by a procedural dualism between the preparatory phase and formal investigation – and to the challenges this poses in aligning domestic investigative measures with the structural requirements of the EPPO framework.

Part C turns to OLAF’s investigative powers, with a focus on the conduct of external investigations under Article 3 OLAF Regulation. It elucidates the limits of OLAF’s authority in the Czech legal order, particularly in cases of non-cooperation by economic operators. The analysis proceeds to examine sectoral statutes – covering areas such as customs, VAT and structural funds – and the procedural norms governing on-the-spot checks. The role of AFCOS is also examined, both in its formal capacity and in its practical utility.

The volume is distinguished by its bilingual structure: national provisions are reproduced in both Czech and English, accompanied by expert commentary. In so doing, the compendium offers not merely a translation of law but a hermeneutic bridge between legal systems. It will serve as a valuable resource to practitioners, academics and institutional actors alike, especially those concerned with the legal tensions that arise at the intersection of supranational enforcement and national sovereignty in the field of financial criminal law.

General structure and concept: Prof. Dr. *Pierre Hauck* LL.M. (Sussex)

National experts: Prof. JUDr. *Jiří Jelínek*, CSc. / Mgr. *Tereza Ottová* (Czech Republic)

Part A and Introduction to Part B: Prof. JUDr. *Jiří Jelínek*, CSc. / Mgr. *Tereza Ottová* (Czech Republic).

Part B (EPPO Analysis): Prof. Dr. *Pierre Hauck* LL.M. (Sussex) / Prof. JUDr. *Jiří Jelínek*, CSc. / Mgr. *Tereza Ottová* / Dr. *Jan-Martin Schneider* (Dipl.-Jur. MR; R.A., University of Gießen) / *Alastair Laird* (R.A., University of Gießen) / *Nur Sena Karakoçaoğlu* (Dipl.-Jur. FFM.; R.A., University of Gießen) and organisations via questionnaires (AFCOS, OAFCN members and Experts).

Part C (OLAF Analysis): Prof. Dr. *Pierre Hauck* LL.M. (Sussex) / Prof. JUDr. *Jiří Jelínek*, CSc. / Mgr. *Tereza Ottová* / Dr. *Jan-Martin Schneider* (Dipl.-Jur. MR; R.A., University of Gießen) / *Alastair Laird* (R.A., University of Gießen) / *Nur Sena Karakoçaoğlu* (Dipl.-Jur. FFM.; R.A., University of Gießen). Further sources: Consultation of Czech Ministry of Finance, Department 42, and expert information via questionnaires.

We gratefully acknowledge Mgr. *Tereza Ottová* (Czech Republic) for her valuable contribution and her input, which significantly supported the clarity and coherence of the work and shaped the refinement of terminology and language through this publication.

Table of Contents

Abbreviations.....	23
Tables & Figures.....	29
Legend and Formating Notes.....	31
A. Czech Legal and Institutional Framework for Parts B and C	33
I. Relevant Case Law on OLAF and EPPO in PIF Investigations	34
1. Case Law of the CJEU and ECtHR.....	34
1.1. Judicial Interpretation of the EPPO Regulation.....	34
1.2. Judicial Interpretation of the OLAF Regulation	40
2. National Case Law.....	43
2.1. Access to Czech Case Law	47
2.2. Request under the Act on Free Access to Information	50
II. Institutions.....	51
1. The EPPO in the Czech Republic.....	51
2. Organisation of the Criminal Justice System in the Czech Republic	53
2.1. Overview of Authorities Involved in Criminal Proceedings	53
2.2. Note on Territorial Jurisdiction.....	57
2.3. Note on Personal Composition of Courts	60
3. AFCOS: OLAF’s Partner in the Czech Republic.....	63
4. The Relationship Between the EPPO and OLAF	63
III. Sources of Law in the Czech Republic	64
1. Overview of Formal Sources of Law.....	65
a) Constitutional Laws [ústavní zákony].....	65
b) International Treaties [mezinárodní smlouvy]	66
c) EU Law.....	66
d) Statutes (Acts of Parliament) [zákony]	66
e) Secondary Legislation	67
f) Judicial Decisions.....	68
2. Key Statutes on PIF Offences and the EPPO (Part B)	69
3. Key Statutes on PIF Offences and the EPPO (Part C)	70
B. EPPO Regulation.....	73
I. Initiating Criminal Investigations under the EPPO Regulation and National Law	73
1. Introduction.....	73
2. Article 26 Initiation of Investigations.....	78
2.1. Introductory Remarks	80
2.2. Procedural Matters	83
2.2.1. Initiation of Investigation (Paragraph 1)	83
a) Proceedings Prior to Investigation	85

Table of Contents

b) Investigation	86
2.2.2. Sources Indicating Offences Within EPPO Competence.....	89
a) Private Persons	90
b) Law Enforcement Agencies and State Authorities.....	93
2.2.3. Determination of Competence.....	94
2.2.4. Conflicts of Competence	95
2.2.5. Actions Following the Decision to Open a Case.....	96
2.2.6. The Term “the Accused” in Czech Criminal Proceedings	97
a) A Suspect [podezřelý]	97
b) An Accused [obviněný].....	98
c) A Defendant [obžalovaný]	98
d) A Convicted Person [odsouzený]	98
2.2.7. Rights of the Person Against Whom Proceedings Are Conducted ..	99
a) Constitutional Guarantees	100
b) The Code of Criminal Procedure.....	102
c) Right to Defence.....	102
i. Right to Submit a Complaint Against a Decision	103
ii. Right to Submit a Complaint Against Inappropriate Conduct..	105
iii. Other Rights of the Accused	105
d) Defence Counsel in Criminal Procedure	106
e) Rights and Duties of Defence Counsel.....	113
2.2.8. Access to National Case File.....	115
2.3. Substantive Matters.....	117
2.3.1. Foundations of Criminal Liability	118
a) Elements of a Criminal Offence	119
b) Misdemeanours and Felonies	123
c) Participation of Multiple Persons in a Criminal Offence	123
d) Stages of a Criminal Offence	124
2.3.2. Overview of Relevant Provisions from the General Part of CC	125
2.3.3. Criminal Liability of Legal Persons	126
a) Jurisdiction	127
b) Principles of Criminal Liability of Legal Persons.....	128
c) Attribution of Liability	129
d) Penalties.....	132
2.3.4. Overview of PIF Offences.....	133
2.3.5. Brief Note on “Inextricably Linked Offences” in Czech Law	134
2.3.6. Investigating PIF Crimes: Practical Case Studies	135
a) Examples of Expenditure and Revenue Frauds.....	135
i. Expenditure Frauds	136
ii. Revenue Frauds and Carousel Frauds.....	138

b) Judicial Decisions	140
3. Article 27 Right of Evocation	147
3.1. The Evocation Procedure	148
3.2. Investigation (Arts 24(2) and Art 27(3)).....	150
3.3. Authorities Notifying the EPPO	150
3.4. Urgent Measures by National Authorities (Paragraph 2)	150
3.5. Finalisation of the National Investigation (Paragraph 7).....	151
3.6. Stages of Czech Pre-Trial Proceedings.....	154
3.6.1. Decisions Concluding Proceedings Prior to Investigation	156
3.6.2. Decisions Concluding Investigation.....	159
4. Article 28 Conducting the Investigation.....	171
4.1. Introductory Remarks	172
4.2. Handling EDP Conducting Investigative Measures (Para 1).....	173
4.3. Notification to National Authorities (Para 4).....	173
4.4. Purpose of Pre-Trial Proceedings and the Role of EDPs.....	174
4.5. Investigative Assignments to National Authorities	178
4.6. Urgent Measures by National Authorities for Securing Investigations	180
5. Article 29 Privileges or Immunities.....	181
5.1. National Rules on Privileges and Immunities (Paragraph 1).....	181
5.2. Legal Provisions on Immunity	182
5.2.1. Parliamentary Immunity (Art 27 of the Constitution).....	183
5.2.2. The President (Art 65 of the Constitution)	184
5.2.3. Constitutional Judges (Art 86 of the Constitution)	186
5.2.4. Judges of General Courts (Act on Courts and Judges).....	186
5.2.5. The Ombudsman (Section 7 of Act on the Ombudsman)	187
5.3. National Provisions on Privileges	187
5.3.1. Privilege Against Self-Incrimination.....	187
5.3.2. Further Witness-Related Protective Instruments.....	189
a) Criminal Investigation with the Consent of the Injured Party	189
b) Prohibition of Interrogation.....	189
5.4. Legal Professional Privilege	190
5.5. Key Distinction: Exemptions, Amnesties and Pardons	194
5.6. Immunities and Privileges Under Union Law (Paragraph 2)	196
II. National Law Applicable in EPPO Investigations with Focus on Investigative Measures.....	197
1. Article 30 Investigative Measures	197
1.1. Constitutional Context of Investigative Measures	199
1.2. Minimum Investigative Measures (Paragraph 1).....	202
1.2.1. Structure under the CCP	202

1.2.2. Searches of a Dwelling, Non-Residential Premises and Land;	
Personal Search (Art 30(1)(a))	204
a) Search of a Dwelling, Search of Non-Residential Premises and Land	
.....	206
i. Search of a Dwelling.....	206
ii. Searches of Non-Residential Premises and Land	207
iii. Rights and Recommended Conduct During a Search.....	207
iv. Recording Authorities During Searches	208
b) Entry into Dwellings, Non-Residential Premises and Land.....	209
c) Personal Search	210
d) Differentiating Between Searches [prohlídka] and Examination	
[ohledání].....	211
1.2.3. Seizure of Items for Criminal Proceedings (Art 30(1)(b) and (d))	
.....	211
a) Seizure of Items for Evidentiary Purposes	213
i. Presentation or Surrender of an Item	213
ii. Withdrawal of an Item	214
b) Seizure of Instruments, Proceeds of Crime, and Replacement Value	
.....	215
i. General Introduction	215
ii. Freezing of Funds in a Bank Account.....	219
iii. Creditor Standing in Asset Seizure	221
iv. Hierarchy of Asset Seizure: Criminal Law, Penalties and	
Creditors' Claims	222
c) Seizure of Items to Secure the Claim of the Injured Party	223
1.2.4. Computer Data and Banking Account Data (Art 30(1)(d)).....	227
a) Securing Computer Data	228
b) Disclosure of Banking Account Data and Traffic Data	229
1.2.5. Interception of Telecommunications Traffic (Art 30(1)(e))	233
a) Wiretapping and Recording of Telecommunications Traffic	234
b) Retrieval of Telecommunications Traffic Data.....	238
1.2.6. Detention, Opening, Substitution and Tracking of Shipments (Art	
30(1)(f))	240
1.2.7. Ancillary Measures: Means of Operational Search.....	243
a) Simulated Transfer	244
b) Surveillance of Persons and Items.....	245
c) Use of an Agent	247
1.3. Minimum Investigative Measures and Remedies under CCP	249
1.4. Limits on Investigations under National Law (Paragraph 2).....	252
1.5. Investigative Limits under National Law and Art 117 (Paragraph 3) ..	252

a) Interception of Telecommunications Traffic (Art 30(1)(e))	252
b) Tracking and Tracing of Objects (Art 30(1)(f))	253
1.6. Any Other Measures in the EDP's Member State (Paragraph 4)	253
1.6.1. Evidentiary Means under Czech Law	253
a) Means of Evidence and Ineffective Evidence	254
b) Evidence Across Stages of Criminal Proceedings	255
1.6.2. Testimony of the Accused	256
1.6.3. Testimony of Witnesses	261
1.6.4. Experts, Expert Offices and Expert Institutes	267
1.6.5. Examination	274
1.6.6. Physical and Documentary Evidence	277
1.6.7. Special Forms of Evidence	278
a) Confrontation [konfrontace]	279
b) Identification [rekognice]	279
c) Investigative Experiment [vyšetřovací pokus]	279
d) Reconstruction [rekonstrukce]	279
e) Verification on Site [prověrka na místě]	280
2. Article 31 Cross-Border Investigations	284
2.1. Introductory Remarks	285
2.2. Cooperation and Assignment of Measures (Paragraph 1 and 2)	286
2.3. Judicial Authorisation (Paragraph 3)	287
2.4. Competent National Authorities (Paragraph 4)	290
2.5. Recourse to Mutual Recognition Instruments (Paragraph 6)	290
3. Article 32 Enforcement of Assigned Measures	291
4. Article 33 Pre-Trial Arrest and Cross-Border Surrender	292
4.1. Securing Persons: Applicable Statutes in the Czech Republic	292
4.2. Provisions for "Arrest and Pre-Trial Detention" (Paragraph 1)	294
4.2.1. Custody Without Charge	295
a) Custody Without Charge of the Accused by the Law Enforcement Agency	295
b) Custody Without Charge of the Suspect by the Law Enforcement Agency	295
c) Temporary Restriction of the Personal Liberty of the Suspect by Any Other Person	296
4.2.2. A Restraint/Arrest Warrant	296
a) A Restraint Warrant for a Suspect	296
b) An Arrest Warrant for an Accused	297
4.2.3. Custody on Remand	299
4.3. Overview of Measures and Remedies under CCP	304
4.4. Defence in Arrest and Remand	306

Table of Contents

4.5. Cross-Border Surrender (Paragraph 2)	307
III. Annexes to Part B of the Czech Chapter.....	309
1. Annex I: General Provisions of the Criminal Code.....	309
2. Annex II: PIF Offences.....	311
3. Annex III: Seizure Measures	330
4. Annex IV: Internal Rules of Procedure (EPPO).....	339
5. Annex V: Draft Amendment to Criminal Statutes	341
5.1. Substantive Law	341
5.2. Procedural Law	342
5.3. Legal Persons	344
C. OLAF Regulation	347
I. General Introduction: Investigative Powers and National Law Related to OLAF in the Czech Republic (Art 1–8 OLAF Regulation)	347
1. Introductory Remarks on OLAF’s Role	347
1.1. Legal Framework and Guidelines	348
1.2. OLAF’s Process of Conducting an Investigation	350
1.3. Current Debate about OLAF’s Powers	351
1.4. Structure of Part C.....	352
2. Art. 1 and 2 Objectives, Tasks and Definitions	353
2.1. “Irregularities”: Their Reporting to OLAF under Czech Law.....	355
2.2. Legal Basis for Cooperation with OLAF (No 34/2023 Coll.)	356
2.3. Authorities Cooperating with OLAF	362
3. Article 3 External Investigation.....	366
3.1. Introductory Remarks	368
3.2. Renouncing the Applicable National Law (Paragraphs 2 and 4).....	370
3.3. Assistance Needed, Competent Authorities and Access to Information in the Member States (Paragraph 5).....	371
3.4. Resistance and the Role of National Administrative Law	371
3.5. National Statutes on On-the-Spot Checks: Customs Statutes.....	375
3.6. National Statutes on On-the-Spot Checks: VAT Statutes	376
3.6.1. Structure of the Statute	377
3.6.2. Tax Audit Proceedings	377
3.7. National Statutes on On-the-Spot Checks: Inspection Code	383
3.7.1. Structure of the Statute	383
3.7.2. Inspection Proceedings	384
3.8. National Statutes on On-the-Spot Checks: Structural Funds.....	390
3.8.1. Relevant Statutes and Information	390
3.8.2. The Financial Inspection Act	392
3.8.3. Protection of Information	398
3.8.4. Seizure of Digital Evidence and Bank Account Data	398

3.8.5. Tax Secrecy	402
3.9. Investigative Missions in Third Countries	403
3.10. Mutual Assistance and Cooperation	404
4. Article 4 Internal Investigations	405
4.1. References to National Law (Paragraph 8)	405
4.2. Competent Authorities	405
5. Article 5 Opening of Investigations.....	407
6. Article 7 Investigations Procedure.....	409
6.1. References to National Law	410
6.2. References to National Authorities	411
7. Article 8 Duty to Inform the Office	412
8. Article 9 Procedural Guarantees	414
8.1. Remit of a National Judicial Authority (Paragraph 3)	414
8.2. National Judicial Authorities (Paragraph 4)	415
9. Article 10 Confidentiality and Data Protection	416
10. Article 11 Investigation Report and Action to Be Taken Following Investigations	418
10.1. Recommendations and Subsequent Proceedings (Paragraph 2)	418
10.2. National Authority (Paragraph 3)	420
II. References to National Law (Art 12–12e OLAF Regulation)	421
1. Article 12 Exchange of Information Between the Office and the Competent Authorities of the Member States	421
1.1. Competent Authorities and Appropriate Action in Accordance with Their National Law (Paragraph 1)	421
1.2. Judicial Authorities of the Member State Concerned (Paragraph 2, 4)	421
2. Article 12a Anti-Fraud Coordination Services	422
2.1. Definition and History	422
2.2. Recent Developments in the Role of AFCOS.....	423
2.3. Detailed Overview of the Czech Republic’s AFCOS.....	425
2.3.1. Introductory Remarks	425
2.3.2. Czech AFCOS Network	426
2.3.3. The Official Logo of the Czech AFCOS.....	427
2.3.4. The Website of the Czech AFCOS.....	428
2.3.5. AFCOS Form for Accessing Database Information	428
2.3.6. Comparative Note on the Czech and Foreign AFCOS	431
3. Article 12e The Office’s Support to the EPPO.....	432
4. Article 13 Cooperation of the Office with Eurojust and Europol.....	434
Bibliography	435
Index	449

Abbreviations

ACA	Administrative Cooperation Agreements
AFCOS	Anti-fraud coordination service
AFIS	Anti-Fraud Information System
AO	Audit authority
AML	Act on Certain Measures Against Money Laundering and Financing of Terrorism [zákon o některých opatřeních proti legalizaci výnosů z trestné činnosti a financování terorismu]
CC	Criminal Code [trestní zákoník]
CEPS	Centre for European Policy Studies
CF	Cohesion Fund
CJEU/ECJ	Court of Justice of the European Union / European Court of Justice [Soudní dvůr Evropské unie / Evropský soudní dvůr]
CKB AFCOS	AFCOS Central Contact Point Czech [Centrální kontaktní bod AFCOS]
COCOLAF	Advisory Committee for the Coordination of Fraud Prevention
COSO	Committee of Sponsoring Organisations
CR	Czech Republic
CCP	Criminal Procedure Code [trestní řád]
CZK	Czech crown [koruna česká]
e.g.	<i>exempli gratia</i> , for example
EAEC	European Atomic Energy Community
EAFO	European Alternative Fuels Observatory
EAFRD	European Agricultural Fund for Rural Development
EAGF	European Agricultural Guarantee Fund
EASA	European Union Aviation Safety Agency
EAW	European Arrest Warrant
EBA	European Banking Authority
EC	European Communities

Abbreviations

EC Euratom	European Communities, European Atomic Energy Community
ECA	European Court of Auditors
ECB	European Central Bank
ECHA	European Chemicals Agency
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ/CJEU	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
ECSC	European Coal and Steel Community
EDF	European Development Fund
EDMS	Electronic Document Management System
EDO	European Data Officer
eDP	ePrivacy Directive
EDP	European Delegated Prosecutor [Evropský pověřený žalobce]
EEAS	European External Action Service
EEC	European Economic Community
EFF	European Fisheries Fund
EIO	European Investigation Order
EJN	European Judicial Network
EP	European Prosecutor
EPPO	European Public Prosecutor's Office [Úřad evropského veřejného žalobce]
ESF	European Social Fund
EUACR	EU Anti-Corruption Report
EUCFR	Charter of Fundamental Rights of the European Union
EuCLR	European Criminal Law Review

EUROJUST	European Union Agency for Criminal Justice Cooperation [Agentura Evropské unie pro justiční spolupráci v trestních věcech]
EUROPOL	European Police Office [Agentura Evropské unie pro spolupráci v oblasti prosazování práva]
EUStA-DG	Federal Act enacting a Federal Law for the Implementation of the European Public Prosecutor's Office [Bundesgesetz, mit dem ein Bundesgesetz zur Durchführung der Europäischen Staatsanwaltschaft (EUStA-DG)]
FIA	Financial Inspection Act
FIU	Financial Intelligence Unit
FU	Financial Authorities
GC	General Court of the EU (formerly the Court of First Instance)
GDPR	General Data Protection Regulation
GFD or GŘ	General Finance Directorate [Generální finanční ředitelství]
IBOA	Institutions, Bodies, Offices and Agencies of the EU
IPR	Internal Rules of Procedure of the EPPO
JHA	Justice and Home Affairs Council
JIT	Joint Investigation Teams
LKB AFCOS	AFCOS Local Point of Contact
MA	Managing Authority
MF	Ministry of Finance [Ministerstvo financí]
MHMP	City Hall of Prague [Magistrát hlavního města Prahy]
MIT	Ministry of Industry and Trade [Ministerstvo průmyslu a obchodu]
MLA Convention	Mutual Legal Assistance Convention
MMR	Ministry of Regional Development [Ministerstvo pro místní rozvoj]
Mn.	Marginal number
MoLSA	Ministry of Labour and Social Affairs [Ministerstvo práce a sociálních věcí]

Abbreviations

MSp	Ministry of Justice [Ministerstvo spravedlnosti]
MŽP	Ministry of the Environment [Ministerstvo životního prostředí]
NAO or NKU	Supreme Audit Office [Nejvyšší kontrolní úřad]
NCOZ	National Headquarters Against Organised Crime of the Criminal Police and Investigation Service [Národní centrála proti organizovanému zločinu Služby kriminální policie a vyšetřování]
NJE	National Contact Point at Europol [Národní jednotka EURO-POL]
No	Number (e.g. of an Act)
NOZ	Civil Code [občanský zákoník]
NP	National plan [Národní plán]
NPO	National Recovery Plan [Národní plán obnovy]
NSZ	Supreme Prosecutor's Office [Nejvyšší státní zastupitelství] / Supreme Prosecutor [Nejvyšší státní zástupce]
OAFCN (-Member)	OLAF Anti-Fraud Communicators' Network
OLAF	European Anti-fraud Office [Evropský úřad pro boj proti podvodům]
PCO	See POC
PHARE	Poland and Hungary Assistance for the Restructuring of the Economy
PIF(-Area)	Protection of the union's financial interests
POC	Payment Certification Authority [Certifikační autorita resortu MF (CA MF)]
PSP CR	Chamber of Deputies of the Parliament of the Czech Republic [Poslanecká sněmovna Parlamentu České republiky]
RRF	Recovery and Resilience Facility
SEC	Securities and Exchange Commission
SF	Structural Funds
SNEs	Seconded National Experts of the Czech Republic

StZast	Act on the Public Prosecutor's Office [zákon o státním zastupitelství]
StPO	Austrian Code of Criminal Procedure [Strafprozeßordnung für die Republik Österreich von 1975, Fassung vom 27.12.2024 BGBl. I Nr. 157/2024]
TOPO	Act on Criminal Liability of Legal Persons and Proceedings Against Them [zákon o trestní odpovědnosti právnických osob a řízení proti nim]
UCLAF	Anti-Fraud Coordination Unit [unité de coordination de la lutte antifraude]
ÚOKFK SKPV	Corruption and Financial Crime Detection Service [Útvar odhalování korupce a finanční kriminality SKPV]
VAT	Value added tax [daň z přidané hodnoty]
ZSM	Juvenile Justice Act [zákon o soudnictví ve věcech mládeže]
ZZVZ	Act on Public Procurement [zákon o zadávání veřejných zakázek]

The abbreviations are introduced within the chapter via formula “hereinafter referred to as” or “hereinafter”.

Tables & Figures

Figures

Figure 1: Cohesion Regions and Regions in the Czech Republic	59
Figure 2: Exercise of EPPO Competence	83
Figure 3: Supranational Mechanisms for the EPPO's Acquisition of Information and Exercise of Jurisdiction.....	93
Figure 4: National Mechanisms for the EPPO's Indirect Acquisition of Information and Exercise of Jurisdiction	93
Figure 5: Right of Evocation, Time Limits, Refraining from Taking Decisions	149
Figure 6: Law Enforcement Agencies – Investigation Authorities	180
Figure 7: Visualisation of the Previous Cooperation Framework under Regulation No 883/2013	425
Figure 8: Visualisation of the Revised Cooperation Framework under Regulation No 883/2013 (as amended by 2020/2223).....	425
Figure 9: Czech Authorities Involved in the AFCOS Network.....	426
Figure 10: Logo of the Czech AFCOS	427

Tables

Table 1: Key Case Law on EPPO Investigations (CJEU, ECtHR)	34
Table 2: Key Case Law on OLAF Investigations (CJEU, ECtHR).....	40
Table 3: Key Case Law on EPPO Investigations (Czech courts).....	43
Table 4: Key Case Law on OLAF Investigations (Czech courts)	45
Table 5: Online Access to Czech Case Law	47
Table 6: EPPO Regional Offices in the Czech Republic.....	51
Table 7: National Authorities Involved in EPPO Investigations.....	53
Table 8: NUTS 2 and NUTS 3 Classification and Czech Regions.....	59
Table 9: Terminology on Judiciary in Czech Criminal Proceedings.....	61
Table 10: Overview of Czech Provisions on Art 26 EPPO Regulation	81
Table 11: Elements of a Criminal Offence under Czech Law	120
Table 12: Modifications of Jurisdictional Rules in TOPO	127
Table 13: PIF Offences in the Czech Republic.....	133

Tables & Figures

Table 14: Decisions in Pre-trial Proceedings.....	155
Table 15: Investigative Measures Under Art 30(1) EPPO Regulation.....	249
Table 16: Investigative Measures Under Art 33(1) EPPO Regulation.....	305
Table 17: National Authorities Relevant for OLAF Investigations.....	363
Table 18: Relevant National Statutes (Art 7 OLAF Regulation)	410

Case Studies

Case Study 1: First EPPO Case in the Czech Republic (2021)	137
Case Study 2: EPPO Investigating Cross-Border Tax Fraud in the Czech Republic	140
Case Study 3: <i>Modus Operandi</i> of Cases Discovered by OLAF.....	352
Case Study 4: Constitutional Court Decision, IV. ÚS 3433/15, 30 August 2016	352

Legend and Formating Notes

Text passages that are highlighted in grey indicate provisions of Union law.

Text passages enclosed within boxes represent relevant national law.

Plain tables provide either a synopsis of foreign legal texts alongside their English translations or a summary of institutions and relevant case law.

Tables with symbols in the first row contain case studies (relating to EPPO and OLAF cases) or significant jurisprudence.

Marginal numbers (e.g. 1, 2, 3) in the general margin facilitate citation.

Symbols Used

	=	Expert/Introduction to national law		=	Police/relevant for investigators
	=	Customs legislation/Customs cases		=	Funds area (e.g. maritime)
	=	Examples		=	Procurement area
	=	Nota bene/General note		=	Judicial authorisation required (e.g. Art 30 EPPO Regulation)
	=	Case law		=	Urgent measures (e.g. Art 27–28 EPPO Regulation)
	=	Tax police/tax-related matters			
	=	Excerpt			
	=	Arrest/custody on remand (e.g. Art 33 EPPO Regulation)	Π	=	Plaintiff
			Δ	=	Defendant
$\textcircled{P}$	=	Problems resulting from national law/translation		=	Case studies (overviews)
	=	Important national provisions		=	Expert comment

Copyright Statements, Open Licences and Other Notes

All vector graphics originate from *openclipArtorg* and are, if used, licensed 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 @openclipArtorg.

Map of the Czech Republic: <https://openclipart.org/detail/263460/czech-republic-map-flag-with-stroke>. It is a freely licensed work, as explained in the definition of Free Cultural Works. Credit goes to Gordon Dylan Johnson/librarian @openclipart.org for the Flags. Expert Icon 6. Flaticon Free Licence (With Attribution). [ahref="https://www.flaticon.com/free-icons/student" title="student icons"](https://www.flaticon.com/free-icons/student) 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. 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 effect. Further information from the Official Gazette is used under Open Licence. Data from GeoNames and all other sources is used on the basis of a CC BY 4.0 licence and Open Government Licence or academic work. All other sources are used on the basis of a CC BY 4.0 licence and Open Government Licence or academic work.

The volume uses the abbreviation “s.” to denote the Czech paragraph (§) sign in English translations of the original provisions, corresponding to “section,” and “ss.” to refer to “sections.” In the original Czech provisions, the “§” sign is maintained.

This manuscript was finalised and submitted on 31 March 2025. All legal references, including statutory provisions and case law aim to reflect the legal framework applicable as of that date. Where relevant, the manuscript refers to draft legislation pending before Parliament at the time of writing – most notably in Annex V to Part B – which is discussed in its proposed form, subject to potential revision.

A. Czech Legal and Institutional Framework for Parts B and C

Part A features a comprehensive overview of the legal framework relevant to the European Public Prosecutor’s Office (hereinafter “EPPO”) and the European Anti-Fraud Office (hereinafter “OLAF”) within the Czech Republic. It is further divided into three key subsections, with each addressing an essential aspect of the Czech legal landscape: **relevant case law**, **institutional structure** and **applicable statutes**. This introductory part aims to contextualise the legal materials presented in the subsequent discussion and facilitate a coherent **understanding of how Czech and European legal frameworks** interact in the prosecution and investigation of **crimes affecting the financial interests of the European Union**.

The first subsection analyses relevant **case law**, focusing on **key judgments** from the **Court of Justice of the European Union** (hereinafter “CJEU”) and the **European Court of Human Rights** (hereinafter “ECtHR”) which influence the interpretation and enforcement of EPPO-related cases in the Czech Republic. This is followed by a discussion of **relevant Czech national case law**. While domestic case law does not create binding precedents in the same manner as common law systems, the role of judicial interpretation remains important in comprehending important legal concepts. For practical purposes, this subsection also provides guidance on accessing relevant judicial decisions, regardless of whether they pertain directly to EPPO or national criminal law provisions which fundamentally underline the EPPO operational framework.

The second subsection examines the **institutional framework** with the purpose to introduce the **key authorities involved in criminal investigations and prosecution concerning PIF crimes**. Therefore, the Czech judiciary, the public prosecutor’s office and law enforcement agencies are introduced. Special attention is also paid to the practical functioning of these institutions, especially in relation to their jurisdictional competencies and specific terminology, which must be carefully considered when analysing and translating relevant legal provisions concerning the judiciary.

The final subsection facilitates the relevant information on **formal sources of law** in the Czech Republic, so as to delineate relevant nuances between primary and secondary legislation, while also distinguishing between different forms of judicial decisions and their binding effect. This general introduction serves as a foundation for the subsequent examination of **the most significant Czech statutes governing EPPO and OLAF-related cases**. Apart from criminal-law related statutes (the Criminal Code, the Criminal Procedure Code, the Act on the Public Prosecutor’s Office), we also introduce other sector-specific statutes relevant to financial investigations and fraud prevention.

By virtue of structuring the chapter around these three core elements – case law, institutions, and statutes – this introduction serves as a structured guide to the legal materials that follow.

I. Relevant Case Law on OLAF and EPPO in PIF Investigations

1. Case Law of the CJEU and ECtHR

1.1. Judicial Interpretation of the EPPO Regulation

- 6 Given the relatively recent establishment of the EPPO, case law of the **Court of Justice of the European Union** is not particularly voluminous, with **only one case directly related to the Czech Republic**. An application was lodged before the General Court shortly before the submission of this manuscript for publication, which we introduce herein.
- 7 Nonetheless, **other cases from different jurisdictions** significantly influence the interpretation and enforcement of EPPO-related measures, and they are included here for completeness. Among these should be highlighted the preliminary ruling request submitted by **Oberlandesgericht Wien** (C-281/22, *GK and Others*), which clarifies cross-border judicial authorisation procedures and has notable implications for EPPO operations (see further Part B.II, Art 31 EPPO Regulation). Another case remains **pending** (C-292/23, *EPPO v I.R.O., F.J.L.R*) and is expected to address the judicial review of procedural acts by the EPPO. Additionally, two dismissal orders (T-103/23, *Stan v EPPO*, and T-46/23, *Kaili v EPPO*) are included at the end of the table, though they are of lesser substantive importance.
- 8 Regarding the **ECtHR**, the Court **has not yet ruled** on Czech EPPO-related cases. However, several ECtHR rulings on Czech national law governing investigative measures and procedural safeguards remain highly relevant. As these measures have a profound impact on proceedings conducted by the EPPO in the Czech Republic, ECtHR decisions assessing their compliance with human rights standards should be considered. These cases concern **searches, surveillance, and conditions of custody on remand**. The selection presented below aims to provide a structured overview of these key rulings, illustrating their relevance to the evolving legal landscape governing EPPO investigations and prosecutions, but does not aim to be exhaustive.



Table 1: Key Case Law on EPPO Investigations (CJEU, ECtHR)

Deciding Court: CJEU		
Relevant Articles	Case Reference	Case Summary
Art 22(1), Art 25(3)(a)	GC, <i>Research Investments and Others v EPPO</i> , T-509/24 (pending).	Action for annulment filed before the General Court of the European Union. The applicants challenge the EPPO’s actions during investigation and prosecution, alleging that the EPPO exceeded its competence. In particular,

		they argue that the EPPO violated Art 25(3)(a) EPPO Regulation by not dismissing or discontinuing proceedings. Additionally, they contend that the EPPO breached its temporal competence under Art 22(1). The alleged criminal activities in question span from 2011 to 2021, and as such, according to the applicants, the EPPO lacks authority to prosecute conduct affecting the EU's financial interests that occurred before 1 December 2019 when the relevant national legislation was adopted. The outcome of this decision will be significant in clarifying the EPPO's temporal jurisdiction and procedural requirements.
Art 29(2)	GC, <i>Kaili v European Parliament and EPPO</i> , Order of the General Court (Seventh Chamber), 16 January 2024, T-46/23, ECLI:EU:T:2024:14.	The European Chief Prosecutor requested the lifting of the privileges and immunities of the applicant, a Member of the European Parliament. The applicant sought the annulment of the request by the European Chief Prosecutor to lift her parliamentary immunity and of the decision of the President of the European Parliament to announce this request to the Parliament and refer it to the Committee on Legal Affairs. The Court dismissed the action as inadmissible, ruling that such acts are not open to challenge under Art 263 TFEU.
Art 31	ECJ, <i>G. K., B.O.D. GmbH, S.L., joined party: Österreichischer Delegierter Europäischer Staatsanwalt (Parquet européen)</i> , Judgment of 21 December 2023, C-281/22, ECLI:EU:C:2023:1018.	This case clarified the procedural requirements for cross-border investigations where judicial authorisation is required in the assisting state. The Court ruled that the scope of judicial review in the assisting state is limited to matters of enforcement, meaning that the assisting state's courts may only assess the execution of the measure, rather than its substantive justification. This appears to apply both in cases aimed at avoiding double judicial review – hence the primary review is assigned to the state of the handling EDP – as well as

		in situations where the requirement for judicial authorisation would arise solely in the state of the assisting EDP. Moreover, where the measure involves a serious interference with fundamental rights, as safeguarded by the Charter of Fundamental Rights of the European Union, its justification and adoption is subject to prior judicial review in the handling EDP's Member State.
Art 42(1)	ECJ, <i>European Public Prosecutor's Office v I.R.O., F.J.L.R.</i> , C-292/23 (pending).	A preliminary ruling is sought regarding the judicial review of procedural acts by the EPPO. An EDP issued witness summonses to two individuals for a criminal trial. However, under Spanish law, while summonses from national prosecutors can be challenged by a complaint, no such provision exists for those issued by an EDP within the framework operating in Spain. The Spanish court questioned whether this lack of appellate recourse is in accordance with Art 42(1) EPPO Regulation and Art 47 of the Charter of Fundamental Rights of the EU, which guarantee the right to effective judicial protection.
Art 42(1) and (2)	GC, <i>Stan v European Public Prosecutor's Office</i> , Order of the General Court of 15 December 2023, T-103/23, ECLI:EU:T:2023:871.	The Court had to determine whether a decision of a Permanent Chamber of the EPPO to bring a case to judgment could be challenged before the EU courts. Beyond procedural concerns regarding the composition of the Permanent Chamber, the case raised a fundamental jurisdictional question: whether such decisions fall within the judicial review competences of the General Court or if they are supposed to be reviewed by national courts. The General Court ruled that the decision of the Permanent Chamber to bring a case to judgment constitutes procedural acts that take legal effect in national criminal proceedings.

Czech Legal and Institutional Framework for Parts B and C

		Therefore, they are not subject to direct challenge before the EU courts and do not fall within the scope of Art 42 EPPO Regulation.
Deciding Court: ECtHR¹		
Art 29	ECtHR, <i>Chadimová v the Czech Republic</i> (Application No 50073 /99), 26 April 2007.	In this case, the destruction of audio cassettes containing recordings of phone calls between a lawyer and client was examined, and the implications of non-compliance with the relevant Constitutional Court case law by the authorities involved in criminal proceedings were analysed.
Art 30	ECtHR, <i>Heglas v the Czech Republic</i> (Application No 5935/02), 1 March 2007.	The judgment addresses the conditions for recording a conversation obtained through a “body-worn listening device”. The recording was subsequently admitted as evidence during the trial. However, there was uncertainty regarding the specific legal provision governing the use of such a device.
Art 30(1)(a)	ECtHR, <i>Maslák et Michálková v the Czech Republic</i> (Application No 52028/13), 14 January 2016.	The case concerns the scope and justification of searches conducted on the applicant’s premises and vehicles. A search warrant was issued by the district court, upon the prosecutor’s proposal, for the applicant’s rented apartment and two cars, despite no criminal proceedings being initiated against the applicant at the time, nor any subsequent prosecution. The searches were justified on the grounds that the police were investigating a serious violent crime and that evidence, such as weapons, could not be secured otherwise due to the risk of destruction.

¹ The Czech Republic, as a signatory to numerous human rights treaties, has been a party to the European Convention on Human Rights (hereinafter “ECHR”) since 1993. A key legal question in this context is whether EDPs can be held liable under the ECHR. Since EDPs operate within national legal frameworks and are subject to domestic laws and regulations, their actions are assessed based on the level of protection afforded by the ECHR. However, the EU’s non-membership in the ECHR and the resulting potential for divergent protection standards present a legal challenge. For further analysis on this issue, see Callewaert (2021, pp. 20–35). The cases cited and summarised in the accompanying table do not concern actions of the EPPO directly but rather those of national prosecutors and investigators. Nonetheless, as EDPs are under Czech legislation also national prosecutors (see Introduction to Part B), ECtHR decisions remain applicable and provide relevant instructions when it comes to the rights of the accused, the permissible scope of coercive measures and related procedural safeguards.

		The applicant argued that the urgency cited for the searches was insufficient and overly formal, merely fulfilling the legal requirement without substantive justification. The Court, however, held that while the deficiencies in the search warrants might affect the defence and procedural propriety, they were not so significant as to render the interference with Art 8 rights unlawful (§ 71). Furthermore, the searches were conducted in the applicant's presence, with the applicant's counsel present for one vehicle, ensuring effective oversight of the process (§§ 79–80). The Court concluded that the applicant was able to exercise sufficient control over the searches, despite unresolved disputes on procedural aspects that were not examined by the Constitutional Court.
Art 30(1)(a)	ECtHR, <i>DELTA PEKÁŘNY, a.s. v the Czech Republic</i> (Application No 97/11), 2 October 2014.	This case pertains to the inspection of business premises aimed at uncovering evidence of an unlawful pricing agreement, with competition rules in the relevant sectors being a key factor. The defendant challenged the absence of prior judicial authorisation and the lack of an <i>ex post facto</i> review to evaluate the necessity of the measure. Furthermore, criticism was directed at the absence of provisions for the destruction of collected data. The applicant was ultimately awarded satisfaction.
Art 30(1)(e) and (f)	ECtHR, <i>Benet Praha, spol. s.r.o. v the Czech Republic</i> (Application No 33908/04, 7937/05, 25249/05, 29402/05 a 33571/06), 28 September 2010.	This decision examines interim measures under s. 102 of the Code of Criminal Procedure (hereinafter “CCP”; now to be found in ss. 88b et seq. CCP). The applicant company argued that the interim measures, allegedly issued in breach of the law, had prohibited it from holding general meetings since November 2005, thereby hindering its ability to conduct its business effectively. It contended that no public interest was served by the interim

Czech Legal and Institutional Framework for Parts B and C

		measures, as they were issued solely for the benefit of a private party.
Art 30(1)(a) and (b)	ECtHR, <i>Fu Quan, s.r.o. v the Czech Republic</i> (Application No 24827/14), 1 June 2023.	The judgment concerns ss. 48, 78(1), 79(1) and 80(8) CCP, addressing the seizing of items and the cessation of such measures when they are no longer necessary. The applicant company argued that its operations had been paralysed for nearly five years and that it had been unlawfully deprived of its assets due to actions taken by the authorities in the criminal proceedings against its managing director and shareholder, without being able to avert or mitigate the damage which it had suffered as a result.
Art 31	ECtHR, <i>Bátěk and others v the Czech Republic</i> (Application No 54146/09), 12 January 2017.	This decision pertains to ss. 55 and 55a CCP, regarding the concealment of a witness's identity. The applicants contended that there were insufficient grounds for not summoning the absent witnesses for questioning and for concealing the identity of the police agent. They further argued that the courts failed to take proactive steps to enable the defence to question the truck drivers prior to initiation of the criminal investigation against the applicants.
Art 33	ECtHR, <i>Vecek v the Czech Republic</i> (Application No 3252/09), 21 February 2013.	This decision deals with the conditions of remanding an accused in custody according to s. 67 CCP. The applicant submitted that the proceedings concerning his application for release did not comply with the requirements of Art 5(4) of the Convention.
Art 33	ECtHR, <i>Husák v the Czech Republic</i> (Application No 19970/04), 4 December 2008.	This decision addresses the conditions for remanding an accused in custody. The applicant argued that the proceedings regarding his application for release did not comply with the requirements of Art 5(4) of the Convention.
Art 33	ECtHR, <i>Spišák v the Czech Republic</i> (Application No 13968/22), 20 June 2024.	The decision examined the automatic periodic review of custody on remand for juveniles compared to adult accused persons. While custody on remand for juveniles detained on

		suspicion of a particularly serious felony [zvlášť závažný zločin; see s. 14(3) CC] is reviewed every six months, custody on remand for adults accused of the same offences is reviewed every three months. The court concluded that this discrepancy constitutes discrimination against juvenile accused persons, in violation of Art 14 of the Convention.

Source: The authors.

1.2. Judicial Interpretation of the OLAF Regulation

- 9
- While rulings of the CJEU and ECtHR concerning OLAF investigations specifically involving the Czech Republic remain rare, one case was recently overturned (C-494/22 P, *Commission v Czech Republic (Briquets de poche)*). These developments must always be considered when assessing the evolving judicial interpretation of OLAF’s investigative powers.
- 10
- Due to the broader legal significance of OLAF-related jurisprudence, relevant decisions from other jurisdictions also provide valuable insights into its operational limits and procedural safeguards and shall be discussed further below.



Table 2: Key Case Law on OLAF Investigations (CJEU, ECtHR)

Deciding Court: CJEU		
Relevant Articles	Case Reference	Case Summary
Art 1–4	ECJ, <i>John Dalli v European Commission</i> , Judgment of the Court (First Chamber), 25 February 2021, C-615/19 P, ECLI:EU:C:2021:133.	The judgment addresses the alleged unlawful conduct of the European Commission and OLAF connected with the termination of his office as a commissioner. It concerns the procedural rules governing OLAF investigations, including the initiation of such investigations and contains <i>obiter dicta</i> on the right to be heard.
Art 3	ECJ, <i>Commission v Czech Republic (Briquets de poche)</i> , Judgment of the Court (Third Chamber), 5 September 2024, C-494/22 P, ECLI:EU:T:2022:281.	The ruling overturned a prior General Court decision (T-151/20) on an OLAF investigation into the evasion of duties by a Laotian company importing Chinese-origin pocket lighters into the EU via the Czech Republic.

		The issue at hand was whether and under what circumstances the Czech Republic owes the Commission the (non-recovered) own resources of the customs duties. The ECJ emphasised that Member States are responsible for establishing the EU's own resources promptly and that awaiting OLAF reports does not justify delays. As such, the ECJ concluded that the Czech Republic failed to demonstrate compliance with the relevant regulations and is obliged to pay the outstanding amounts to the Commission.
Art 4	ECJ, <i>European Commission v Fernando De Esteban Alonso</i>, Judgment of the Court (First Chamber), 10 June 2021, C-591/19 P, ECLI:EU:C:2021:468.	EC appealed a General Court ruling that awarded EUR 62,000 to former official F. De E. Alonso for harm allegedly caused by OLAF and the Commission. He claimed he was not informed before OLAF shared information with French authorities and that the Commission filed a complaint too early. ECJ overturned the judgment, finding that he was neither named nor sufficiently implicated to require notification. The Commission's first complaint (filed "against X") was lawful and no direct causal link existed between the institutions' actions and the harm alleged.
Art 7	ECJ, <i>Vialto Consulting Kft. v European Commission</i>, Judgment of the Court (First Chamber), 28 October 2021, C-650/19 P, ECLI:EU:C:2021:879.	The judgment concerns an investigation conducted by OLAF, including on-the-spot checks carried out under Regulation (Euratom, EC) No 2185/96, specifically Art 7 regarding access to computer data. It addresses issues related to digital forensic operations, the principle of legitimate expectations, the right to be heard and

Czech Legal and Institutional Framework for Parts B and C

		claims for non-pecuniary damage. Regarding the right to be heard, the ECJ ruled that the European Commission violated the right by not providing the appellant an opportunity to present their views before recommending to national authorities the exclusion of the company from an EU-funded contract.
Art 10	GC, <i>International Management Group v European Commission</i> , Judgment of the General Court (Eighth Chamber), 26 May 2016, T-110/15, ECLI:EU:T:2016:322 (see OLAF 2018).	This case is particularly significant for access to documents requested under Regulation (EC) No 1049/2001. It concerns documents related to an OLAF investigation, access to which was denied. The court examined the exception concerning the protection of the purpose of inspections, investigations and audits, as well as the obligation to conduct a specific and individual assessment. The categorisation of documents was deemed crucial.

Source: The authors.

2. National Case Law

Individual references to relevant national case law will be incorporated throughout Part B and Part C to facilitate more efficient comprehension of relevant national provisions. At this point, it is crucial to introduce the **role of case law** within the Czech Republic and **provide guidance on accessing relevant judgments**. In the Czech legal system, courts **do not have legislative powers** as in common law jurisdictions. However, their interpretative role remains crucial, as judicial opinions, while not binding precedents, can strongly influence legal interpretation. Terhechte (2020, pp. 569 et seq.) focuses on the essential “conditions for the success” of the European judicial network, emphasising the role of national courts within the intricate framework of effective EU law enforcement.

In the Czech context, scholars such as Kühn (2005) and Bobek (2008) have examined the interpretative function of case law in shaping legal norms. For practitioners in prosecution offices and investigative teams, staying updated on recent rulings is essential, as they can refine legal interpretation and provide essential guidance for enforcement across the EU.

At present, Czech courts have not established a systematic body of case law governing the relationship between the EPPO and national authorities, with higher courts addressing this issue only sporadically.

Table 3: Key Case Law on EPPO Investigations (Czech courts)

Deciding Court: Constitutional Court of the Czech Republic		
Relevant Articles	Case Reference	Case Summary
Art 30(1)(d)	Judgment of the Constitutional Court No I. ÚS 1675/23 of 19 September 2023.	The Court examined a complaint concerning the refusal of the High Court in Prague to submit a request for a preliminary ruling to CJEU regarding the interpretation of Art 30(1)(d) EPPO Regulation. The case arose after substitute assets were seized under s. 79g CCP, which the complainant argued was outside the scope of EPPO’s powers under Art 30(1)(d). The High Court dismissed the complainant’s appeal, ruling that the EPPO Regulation does not exhaustively list the investigative measures available to EDPs but instead sets a minimum standard of powers that must be granted. The complainant alleged that the

11

12

13



		High Court violated their procedural rights by failing to refer a preliminary question to the CJEU. However, the Constitutional Court found no breach of constitutional rights, as the complainant did not challenge the police measure itself but rather the High Court's interpretation of the EPPO Regulation. The Court upheld the High Court's decision, ruling that its refusal to refer the question was legally sustainable, as the interpretation that Art 30 does not impose a restrictive list of EPPO's investigative powers was not manifestly incorrect. The complaint was dismissed by a judgment after substantive examination [zamítnuta]. ²
Art 31, 32	Decision of the Constitutional Court No II. ÚS 646/24 of 17 April 2024.	The decision concerns the legality of search warrants issued by a Czech court at the request of the EPPO in a case of suspected VAT carousel fraud. The investigation was led by a German handling EDP, who delegated certain investigative actions, including searches, to a Czech assisting EDP. While the judgment acknowledges the EPPO's role, it does not extensively analyse the procedural framework set out in Arts 31, 32 EPPO Regulation, which govern cross-border cooperation and the execution of investigative measures. The decision ultimately upholds the validity of the searches, affirming that they met national legal standards.
Art 5(3), Art 42(1)³	Decision of the Constitutional Court No IV. ÚS 1292/24 of 5 June 2024; Decision of the Constitutional Court No	These complaints reiterate <i>inter alia</i> that the EPPO lacks jurisdiction over the case. As such, the complainants allege violation of Art 38(2) the Czech Charter of Fundamental

² In the same case, another complaint was submitted but was dismissed [odmítnuta] by a resolution, see the decision of the Constitutional Court No IV. ÚS 1674/23 of 15 November 2023.

³ This is reproduced in the decision as a paraphrase from the complaint; however, as the case was dismissed by a resolution, no detailed argumentation was provided, nor was the relevance of the complainant's reference to these articles thoroughly examined.

Czech Legal and Institutional Framework for Parts B and C

	I. ÚS 2902/24 of 30 October 2024.	Rights and Freedoms. However, with the proceedings still ongoing, the court concluded that ordinary remedies have not yet been exhausted, and the matter can be effectively discussed before the High Court.

Source: The authors.

In relation to OLAF, national courts have adjudicated as well, though these adjudications pertained primarily to national statutes rather than its interaction with EU law. For the sake of completeness and understanding the framework, these are nonetheless mentioned below.

14

Table 4: Key Case Law on OLAF Investigations (Czech courts)



Deciding Court: Constitutional Court of the Czech Republic		
Relevant Statutes	Case Reference	Case Summary
Act on Free Access to Information	Judgment of the Supreme Administrative Court No 8 As 156/2021-26 of 28 February 2023.	A request for information regarding OLAF's final report cannot be dismissed solely on the grounds that OLAF qualifies as an authority involved in criminal proceedings and thus falls within the scope of Art 11(6) of the Act. The request was denied on the basis that disclosure could compromise the ongoing criminal proceedings. However, the court disagreed, holding that the mere inclusion of a document in a criminal file does not automatically justify non-disclosure. Competent authorities must assess whether specific parts of the document can be disclosed without jeopardising the investigative process,

		ensuring a balanced approach between transparency and the integrity of criminal proceedings.
Customs Act	Judgment of the Supreme Administrative Court No 1 Afs 44/2011-85 of 10 August 2011 (followed by subsequent case law, e.g. 10 Afs 369/2021-48; 2 Afs 332/2016-41; 1 Afs 45/2011-84). ⁴	An OLAF report can serve as sufficient evidence for customs authorities to retroactively assess import duties and anti-dumping duties. Even if a preliminary one, it still constitutes adequate evidence for such assessments on duties, provided it contains clear, specific, and concrete information challenging the declared preferential origin of the imported goods.
Administrative proceedings	Judgment of the Supreme Administrative Court No 10 Afs 136/2022-93 of 27 February 2024.	The judgment concluded court proceedings initiated after the Ministry's decision to require the return of funds in administrative proceedings. The Ministry's decision was based on an OLAF report alleging that the recipient had artificially created conditions to obtain a subsidy. The Court concluded that while OLAF reports are admissible as evidence, they do not constitute conclusive proof (they are not the decisive crown of evidence). Administrative

⁴ In this and similar cases, the decisions of the Supreme Administrative Court were later upheld by the Constitutional Court, which found no procedural deficiencies (see the decision No IV. ÚS 3433/15 of 30 August 2016 and No IV. ÚS 2483/23 of 28 November 2023). This judgment was delivered under the previous Customs Code; however, similar decisions have been issued even after its recodification.

		authorities are required to independently assess all relevant evidence, including any counter-evidence presented by the subsidy recipient, to determine whether the conditions for subsidy repayment are met. The OLAF report does not absolve the authorities from the duty to substantiate their claim.

Source: The authors.

2.1. Access to Czech Case Law

Several online platforms provide **public and free access** to Czech case law, offering varying degrees of coverage depending on the court level and case type.

15

Table 5: Online Access to Czech Case Law



Judicial Authority	Access
Constitutional Court	Access case law of the Constitutional Court via: https://nalus.usoud.cz/Search/Search.aspx . Accessed 31 March 2025. Select appropriate filters to access rulings that were published in the Collection of Judgments and Resolutions of the Constitutional Court.
Supreme Court	Access case law of the Supreme Court via https://rozhodnuti.nsoud.cz/ . Accessed 31 March 2025. The most important rulings, published in the Collection of Judicial Decisions of the Supreme Court, are available at https://sbirka.nsoud.cz/ . Accessed 31 March 2025.
Supreme Administrative Court	Judgments of the Supreme Administrative Court can be accessed via https://vyhledavac.nssoud.cz/Home/Index?formular=4 . Accessed 31 August 2024. Significant rulings published in the Collection of Decisions of the Supreme Administrative Court can be found at https://sbirka.nssoud.cz/ . Accessed 31 March 2025.

Comprehensive case law of Czech courts	Judgments from district courts, regional courts, high courts, the Supreme Court, the Supreme Administrative Court, and the Constitutional Court are available at https://justice.cz/web/msp/rozhodnuti-soudu-judikatura-. Accessed 31 August 2024. Please note that not all lower court rulings are published in this public database, which is especially the situation with criminal cases. Selected rulings from regional and high courts can also be accessed at https://www.nsoud.cz/judikaturavks/judikatura_vks.nsf/web-SpreadSearch. Accessed 31 March 2025.

Source: The authors.

- 16 Apart from databases which are meant to include all decisions of the given court – even if that does not happen to be always the case, as mentioned above – three judicial bodies publish their own **public collections** of their most relevant decisions online. Links to these collections are to be found in the table above as well.
- 17 The most relevant decisions of the **Constitutional Court** are published annually in **Collection of Judgments and Resolutions of the Constitutional Court** [*Sbírka náleží a usnesení Ústavního soudu*]. This collection includes all judgments issued during the calendar year. Resolutions may also be published if the plenary session of the Court so decides. This is to ensure that such legal opinions can be duly considered by public authorities.
- 18 The **Supreme Court** publishes the **Collection of Judicial Decisions of the Supreme Court** [*Sbírka soudních rozhodnutí a stanovisek*], informally known as “the green one” due to its former green cover when printed. Its primary purpose is to unify judicial decision-making by obligatorily publishing the Court’s opinions and selectively including significant final decisions from the Supreme Court as well as the lower courts.
- 19 The collection is managed by a registration bench [*evidenční senát*], which gathers and reviews judicial decisions, monitors divergent interpretations of legal provisions, and maintains an internal database of conflicting rulings and key issues referred to larger benches.⁵ Published online throughout the year, the selection process involves consulting administrative authorities, court presidents, universities, and other relevant entities for recommendations.
- 20 The final public authoritative collection is issued by the **Supreme Administrative Court** as the **Collection of Decisions of the Supreme Administrative Court** [*Sbírka*

⁵ See s. 24 of the Act on Courts and Judges [zákon č. 6/2002 Sb., o soudech a soudcích] and Arts 39 et seq. of the Rules of Procedure of the Supreme Court. The latter is available at: https://www.nsoud.cz/fileadmin/user_upload/Organizacni-dokumenty/Jednaci_rad.pdf. Accessed 31 March 2025.

rozhodnutí Nejvyššího správního soudu]. It contains selected rulings from the Supreme Administrative Court and regional courts in administrative judiciary, along with key opinions and fundamental resolutions aimed at unifying judicial decision-making and promoting clearer interpretation of specific administrative concepts.⁶ The collection is published online on a regular basis, with twelve issues per year.

Furthermore, for unified access to **judgments concerning EU-relevant offences**, the Czech Republic has established a SharePoint platform. This platform, administered by the Ministry of Finance's AFCOS Central Contact Point (CKB AFCOS), provides centralised access to rulings related to EU fraud and related matters. Further details, including how to request access, can be found on the Ministry of Finance's website.⁷ 21

In addition to public resources, relevant case law can also be accessed through **private legal collections**, such as Beck Online, ASPI, and Codexis, which require prior registration.⁸ An alternative resource, available without registration, is Salvia Kraken.⁹ 22

Should **historical case law** be required, judgments from authoritative private collections of judges František Vážný and Josef V. Bohuslav are organised in volumes and available online.¹⁰ Vážný's collections cover judicial decisions of the Czechoslovak Supreme Court in both civil and criminal matters.¹¹ Bohuslav's collections include both administrative law matters and financial law matters.¹² Full-text search is generally possible via the **National Legal Heritage** [*Národní právní dědictví*] portal, maintained by the Institute of State and Law of the Czech Academy of Sciences [*Ústav státu a práva Akademie věd České republiky*]. 23

⁶ See ss. 18, 22 of Administrative Procedure Code [zákon č. 150/2002 Sb., soudní řád správní] and ss. 75–86 of the Rules of Procedure of the Supreme Administrative Court. The latter is available at: https://www.nssoud.cz/fileadmin/user_upload/dokumenty/organizacni-dokumenty/jednaci_rad_2014.pdf. Accessed 31 March 2025

⁷ See <https://www.mfcr.cz/cs/zahranicni-sektor/ochrana-financnich-zajmu/financni-zajmy-eu/cinnost-ckb-afcos/2020/formular-pro-pristup-do-informacniho-sys-38728>. Accessed 31 March 2025.

⁸ For Beck Online, see <https://www.beck-online.cz/>; for ASPI, see <https://www.aspi.cz/menu/search>; for Codexis, see https://codexis.cz/?gad_source=1&gclid=CjwKCAiA7Y28BhAnEiwAAAdOJUMStw3UcnfkI3j3yk72IperX3ifj8AoN7zNFjXoyEsvNUUV7Hno9VhoCvc4QAvD_BwE. All accessed 31 March 2025.

⁹ Available at: <https://kraken.slv.cz/>. Accessed 31 March 2025.

¹⁰ However, this server does not always operate and sometimes, scanned versions of case law must therefore be consulted. Available at: <https://www.npd.cz/>. Accessed 31 March 2025

¹¹ For Vážný's Decisions of the Supreme Court of the Czechoslovak Republic in Criminal Law Matters [Rozhodnutí nejvyššího soudu československé republiky ve věcech trestních] see <https://www.digitalniknihovna.cz/nkp/periodical/uuid:733adde0-1a90-11e7-8a18-5ef3fc9ae867>. For his Decisions of the Supreme Court of the Czechoslovak Republic in Civil Law Matters [Rozhodnutí nejvyššího soudu československé republiky ve věcech občanských] see <https://www.digitalniknihovna.cz/nkp/periodical/uuid:2edbf7e0-d3e8-11e6-8f29-5ef3fc9ae867>. All Accessed 31 March 2025.

¹² For Collection of Judgments of the Supreme Administrative Court in Administrative Law Matters [Sbírka náleží Nejvyššího správního soudu ve věcech administrativních] see <https://ndk.cz/periodical/uuid:6a0e36a0-1b66-11e7-94e5-001018b5eb5c> (1919–1935) and <https://ndk.cz/periodical/uuid:578158a0-db63-11e8-a5a4-005056827e52> (years 1935–1949). For Collection of Judgments of the Supreme Administrative Court in Financial Law Matters [Sbírka náleží Nejvyššího správního soudu ve věcech finančních] see <https://ndk.cz/periodical/uuid:9fbf2d50-7cf9-11ec-bc36-005056827e51> (1919–1949). All accessed 31 March 2025.

- 24 In cases where specific judicial decisions are not displayed correctly, they can be located through scanned versions of the collections by referencing the decision number. All scanned collections are accessible through the **National Digital Library** [*Národní digitální knihovna*]. In addition to that, Vážný's collections can be downloaded in PDF format via the *DigiLaw* database provided by the **Masaryk University** [*Masarykova univerzita*].¹³ Please note that access to some of these resources may require a Czech IP address.

2.2. Request under the Act on Free Access to Information

- 25 If the aforementioned methods do not result in obtaining the full text of the sought case law, and it is not accessible to the requesting individual through international judicial cooperation (e.g. if the applicant is defence counsel rather than a law enforcement agency of a different country), a request may be submitted directly to the relevant court for an **anonymised version of the judicial decision**.
- 26 Such a request is governed by the Act on Free Access to Information [zákon č. 106/1999 Sb., o svobodném přístupu k informacím]. Contact addresses, data box IDs, and e-mail addresses of individual courts can be found on the website of the Ministry of Justice of the Czech Republic [*Ministerstvo spravedlnosti ČR*].¹⁴ The e-mail should be directed to the e-mail address of the relevant court registry.
- 27 In such a request, a **natural person** must provide his or her name, surname, date of birth, address of permanent residence or, if not registered as a permanent resident, their current residential address, along with an address for service if it differs from the permanent or residential address.
- 28 A **legal person** must specify its name, personal identification number, registered office address, and address for service, if different from the registered office address. The address for service may also be an electronic address (e.g. a mailbox). Such a request is not limited to natural persons holding Czech citizenship or to legal persons domiciled in the Czech Republic.¹⁵
- 29 A request submitted by either of these persons must clearly indicate the subject to which it is directed and confirm that the petitioner is requesting information pursuant to the aforementioned statute (see s. 14(2)). It is beneficial to state directly in the request whether it is sufficient for the decision to be delivered via e-mail.

¹³ Criminal law collection available at: <https://digi.law.muni.cz/xmlui/handle/digilaw/4889>; civil law collection available at: <https://digi.law.muni.cz/xmlui/handle/digilaw/4888>. Accessed 31 March 2025.

¹⁴ Available at: <https://msp.gov.cz/soudy>. Accessed 31 March 2025.

¹⁵ Furek et al. 2016, p. 17.

When requesting a judgment, it should preferably be identified by the issuing authority, the date of issuance, and, preferably, the document number [číslo jednací] or case reference number [spisová značka], which, when combined with a specific date, generally provides sufficient identification of the decision.

30

In some instances, it may be possible to request a judicial decision without specifying the exact case number by providing a detailed description of the case; however, this approach is dependent on the particular circumstances and is evaluated on a case-by-case basis. While formally, the current wording of the Act in s. 11(4)(b) permits only the requesting of judgments [rozsudek] and not of resolutions [usnesení], court practice shows that even resolutions can be obtained, especially when concluding the case.¹⁶

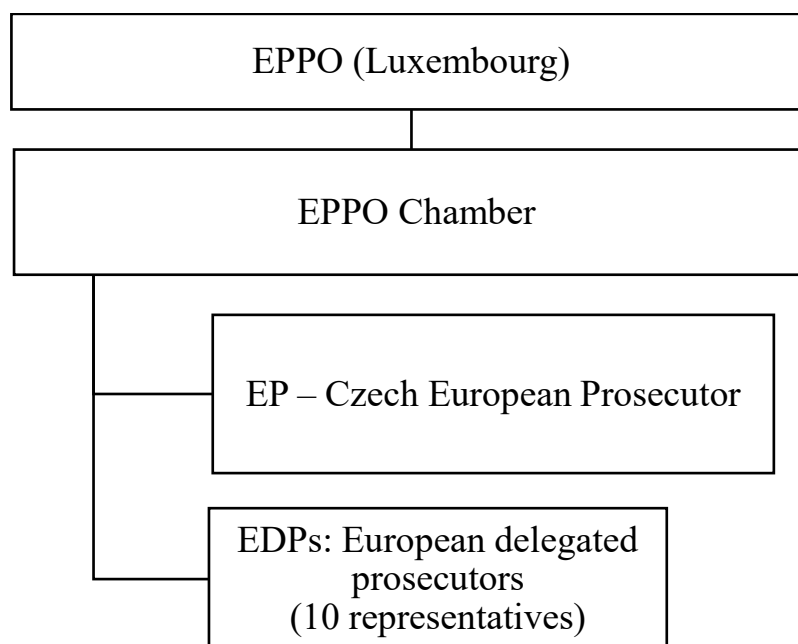
31

II. Institutions

1. The EPPO in the Czech Republic

Table 6: EPPO Regional Offices in the Czech Republic

32



Source: EPPO Website. <https://www.eppo.europa.eu/en/about/members/czechia>. Accessed 31 December 2024.

¹⁶ See Jelínková and Tuháček 2019, pp. 157–158. Previously, the literal wording of the provision explicitly prohibited the disclosure of judgments that had not yet come into force. However, following the decision of the Constitutional Court (decision No Pl. ÚS 2/10, published in the Collection of Statutes under No 123/2010 Coll.), the term “pravomocný” (final and binding) was removed from the relevant section. Nevertheless, the Court did not rule that any judgment – whether final or non-final – should be provided automatically. Instead, it emphasised that in each individual case, the necessity of restricting an individual’s fundamental right to information must be assessed based on the specific circumstances. This includes evaluating any limitations on the right to access non-final judgments. In conducting this assessment, it is essential to recognise that public discussion of a court case does not automatically interfere with judicial independence or impartiality; on the contrary, it may contribute to independent and impartial decision-making.

- 33 The Regional Office of the EPPO operates with several sub-offices located in Prague, Liberec, Zlín, České Budějovice, Ostrava and Brno. Each of these offices is staffed by European Delegated Prosecutor(s) (hereinafter “EDP(s)”), ensuring effective regional enforcement of the EPPO’s mandate. In Prague, EDPs are assigned to the High Public Prosecutor’s Office [*Vrchní státní zastupitelství*], whereas in other cities, they operate within the Regional Public Prosecutor’s Office [*krajské státní zastupitelství*]. For the discussion of various instances, see Chapter 2.1 below.
- 34 An important distinction must be noted – in national proceedings, **the assigned public prosecutor may change as the case progresses through different procedural stages**. For instance, in appellate proceedings, jurisdiction shifts to the public prosecutor at the court handling the appeal (e.g. a regional court prosecutor takes over after a district court ruling). However, EDPs **remain assigned to the case throughout its entire duration, ensuring continuity in handling investigations and prosecutions within the EPPO framework**.
- 35 The seeming straightforwardness and clarity of this structural arrangement shall be subject to further scrutiny in relation to individual measures, as it does not preclude the involvement of external actors. Beyond the EPPO’s internal hierarchy, cooperation with courts and law enforcement agencies remains essential **and even national prosecutorial supervision may come into play**. As will be discussed further, certain competencies remain reserved for the **Supreme Prosecutor’s Office** [*Nejvyšší státní zastupitelství*, hereinafter referred to as “NSZ”], potentially influencing the functioning of EDPs within the Czech legal framework.
- 36  At this stage, it is important to highlight **s. 34c(2)** of the Act on the Public Prosecutor’s Office [zákon č. 283/1993 Sb., o státním zastupitelství]. This is relevant from organisational perspective but virtually does not affect the jurisdictional rights and duties of the EPPO. This provision establishes **that the head of the prosecution office designated as the workplace of an EDP** holds supervisory authority only to the extent permitted by the EPPO Regulation. In practice, this authority is strictly limited to residual administrative and material matters, such as resource management, security, and workplace safety, without encroaching on the substantive prosecutorial powers of the EDP. Given that the EDP operates within the hierarchical structure of the EPPO, their prosecutorial decisions remain independent of national prosecutorial oversight. Partial disciplinary measures remain with the head of the local national prosecution office (see Part B.I, Art 26 EPPO Regulation, Chapter 2.2.7).

2. Organisation of the Criminal Justice System in the Czech Republic

2.1. Overview of Authorities Involved in Criminal Proceedings

Table 7: National Authorities Involved in EPPO Investigations

37



Authority & essential statutes	Description
Authorities involved in criminal proceedings [<i>orgány činné v trestním řízení, OČTŘ</i>] <i>Section 12(1) CCP</i>	Law enforcement agencies, public prosecutors and courts constitute the authorities involved in criminal proceedings, as defined in s. 12(1) of the Code of Criminal Procedure (hereinafter “CCP”).
Law enforcement agency [<i>policejní orgán</i>] Section 12(2) CCP; Articles 4–6 of the Binding Instruction of the Chief of Police No 137/2009, issued on 21 April 2009, on the Performance of Tasks in Criminal Proceedings ¹⁷	Law enforcement agencies include: units of the Police of the Czech Republic, General Inspection of Security Forces, authorised bodies of the Prison Service of the Czech Republic, authorised customs authorities, authorised bodies of the Military Police, authorised bodies of the Security Information Service [<i>Bezpečnostní informační služba</i>], authorised bodies of the Office for Foreign Relations and Information [<i>Úřad pro zahraniční styky a informace</i>], authorised bodies of the Military Intelligence [<i>Vojenské zpravodajství</i>]. PIF crimes are most commonly to be investigated, prior to being handed over to OLAF or the EPPO, by the Economic Crime Departments of the Regional Directorates of Criminal Police and Investigation Service [<i>Oddělení hospodářské kriminality Krajského ředitelství Služby kriminální policie a vyšetřování</i>], the National Headquarters Against Organised Crime of the Criminal Police and Investigation Service [<i>Národní centrála proti organizovanému zločinu</i>], or by authorised customs bodies.
Public prosecutor [<i>státní zástupce</i>] Section 12(6) CCP; ¹⁸	The public prosecutor serves as the authority responsible for public prosecution in criminal proceedings [<i>trestní řízení</i>] and undertakes other tasks as defined by the CCP, unless otherwise

¹⁷ Závazný pokyn Policejního prezidenta ze dne 21. dubna 2009, o plnění úkolů v trestním řízení.

¹⁸ Please note that as of 1 January 2025, this provision is renumbered, being previously s. 12(5) CCP.

Section 4–5 of the Act on the Public Prosecutor’s Office;
Section 12 et seq. of the Decree of the Ministry of Justice No 23/1994 Coll., on the Rules of Procedure of the Public Prosecutor’s Office, the Establishment of Branches of Certain Public Prosecutor’s Offices and the Details of the Acts Performed by the Legal Assistants¹⁹

provided by the Regulation establishing the EPPO. The system of public prosecution consists of the Supreme Prosecutor’s Office [*Nejvyšší státní zastupitelství*], the High Prosecutor’s Office [*vrchní státní zastupitelství*], regional prosecutor’s offices [*krajské státní zastupitelství*] and district prosecutor’s offices [*okresní státní zastupitelství*].

The seats of the public prosecutors’ offices and their territorial jurisdictions correspond to the seats and districts of the courts. Therefore, in general, when a regional court has jurisdiction to hear a case, it is prosecuted by a public prosecutor from the Regional Prosecutor’s Office located within the same territory. The public prosecutor attached to the public prosecutor’s office corresponding to the court competent to conduct first-instance proceedings after the filing of an indictment is responsible for supervising the legality of pre-trial proceedings, unless otherwise provided by law.

A notable exception is set out in s. 12 of the Decree of the Ministry of Justice No 23/1994 Coll., which assigns jurisdiction of High Prosecutor’s Office for certain cases. These include, among others, crimes committed in the operations of a bank, investment company or fund, securities dealer, insurance company, health insurance company, pension fund, building society or savings and credit cooperative, where the damage caused exceeds CZK 150 million; crimes affecting the financial or economic interests of the European Union causing damage of at least CZK 150 million; or offences against the unified European currency committed for the benefit of an organised criminal group, by a member of such group, on a significant or large scale. Furthermore, the High Prosecutor’s Office is competent where proceedings concerning offences against the unified European currency are conducted by a law

¹⁹ Vyhláška Ministerstva spravedlnosti č. 23/1994 Sb., o jednacím řádu státního zastupitelství, zřízení poboček některých státních zastupitelství a podrobnostech o úkonech prováděných právními čekateli.

	enforcement agency functioning as a special focal point under Art 12 of the International Convention for the Suppression of Money Laundering. In such cases, jurisdiction lies with the prosecutor from the High Prosecutor's Office within whose district the lower public prosecutor's office, which would otherwise have jurisdiction, is located.
European Delegated Prosecutor [<i>Evropský pověřený žalobce</i>] Section 34b et seq. of the Act on the Public Prosecutor's Office; Criminal Procedure Code	Under the CCP, the term "public prosecutor" includes also the EDP, the European Public Prosecutor and the European Chief Prosecutor, within the scope of their competence as defined by the EPPO Regulation. When a case is taken over in accordance with the EPPO Regulation, all rights and obligations vested in regular public prosecutors transfer to the EDP, otherwise provided by the EPPO Regulation. In the Czech Republic, nine EDPs have been appointed. To the extent permitted by the EPPO Regulation, the Supreme Prosecutor's Office resolves jurisdictional disputes between the public prosecutor's office and the EPPO.
Court [<i>soud</i>] Act on Courts and Judges; Sections 13–31 CCP	Proceedings are conducted by the court in the district where the offence was committed (<i>forum delicti commissi</i>). If the location of the offence cannot be ascertained or if the offence occurred abroad, the proceedings are held in the district where the accused resides, works, or stays (<i>forum loci</i>). If these locations cannot be ascertained or are outside the territory of the Czech Republic, the proceedings are held by in the district where the offence came to light (<i>forum scientiae</i>). Slightly different rules apply if the accused is a minor or a legal person (see s. 37 of Juvenile Justice Act for minors and for legal persons, see s. 29 Act on Criminal Liability of Legal Persons).²⁰ First-instance proceedings [<i>soud prvního stupně</i>] are conducted by the district court [<i>okresní soud</i>], unless

²⁰ Zákon č. 218/2003 Sb., o soudnictví ve věcech mládeže; zákon č. 418/2011 Sb., o trestní odpovědnosti právnických osob a řízení proti nim.

otherwise provided by CCP. Regional courts [*krajský soud*] serve as first-instance courts for offences punishable by at least five years of imprisonment or where an exceptional imprisonment may be imposed. Additionally, regional courts also hear in the first instance cases involving criminal offences of manslaughter (s. 141 CC), infanticide (s. 142 CC), removing tissues and organs without consent (s. 164 CC), illicit handling of human tissues and organs (s. 165 CC), removing and transplanting organs and tissues for consideration (s. 166 CC), illicit handling of human embryos and genomes (s. 167), human trafficking (s. 168), sexual assault (s. 185a(3) CC); or criminal offences committed by means of investment instruments which are admitted to trading on a trading system or for which admission to trading on a trading system has been requested, or counterfeits and imitations thereof, where their legal nature is to cause substantial damage or to obtain substantial benefit (a benefit of more than CZK 1 million), breach of competition law (s. 248 CC), manipulation of the price of investment instruments (s. 250 CC), abuse of information in business relations (s. 255 CC), abuse of position in business relations (s. 255a CC), damaging the financial interests of the European Union (s. 260 CC), breach of controls on exports of dual-use goods and technologies (s. 262 CC), breach of obligations when exporting dual-use goods and technologies (s. 263 CC), manipulation of data and failure to keep records concerning exports of dual-use goods and technologies (s. 264 CC), foreign trade in military equipment without an authorisation or licence (s. 265 CC), breach of duty concerning the issue of authorisations and licences for foreign trade in military equipment (s. 266 CC), manipulation of data and failure to keep records concerning foreign trade in military equipment (s. 267 CC), development, production and possession of prohibited munitions (s. 280 CC); as well as terrorist

	offences and certain offences against the state and peace (cf. s. 17 CCP). Appellate courts [odvolací soud] for cases heard in the first instance by district courts are regional courts; for cases heard in the first instance by regional courts, the appellate courts are high courts [vrchní soud]. The Supreme Court [Nejvyšší soud] then decides on most extraordinary remedies, except for applications for a retrial [návrh na povolení obnovy řízení]. Outside this judicial structure, the Constitutional Court [Ústavní soud] adjudicates cases concerning potential violations of constitutionally guaranteed rights.

Source: The authors.

2.2. Note on Territorial Jurisdiction

To fully comprehend the operation of various state authorities, chiefly within criminal proceedings, a more nuanced understanding of territorial jurisdiction beyond what was previously outlined in this chapter is essential. This chapter focuses specifically on **aspects of territorial jurisdiction** relevant to pre-trial criminal proceedings and first-instance proceedings rather than further stages, in line with the purpose of this Compendium. A brief note on jurisdiction concerning ordinary and extraordinary remedies is provided in the previous chapter. Some of the facts presented below will contribute to a broader understanding of the general functioning of **Czech administrative structures** beyond the scope of criminal proceedings.

38

As previously mentioned, the **prosecutor conducting the proceedings is attached to the court handling the case**, with specific rules and exceptions set out therein (see Chapter 2 above). Special rules apply in certain cases, such as authorisations for wire-tapping and recording of telecommunications traffic, which are discussed predominantly in relation to measures of Art 30 EPPO Regulation.

39

In terms of administrative division, the Czech Republic consists of **14 regions** [kraje] as higher-level local authorities [vyšší územní samosprávné celky]. **Municipalities** [obce] serve as **lower-level local authorities** [základní územní samosprávné celky]. However, the **territorial jurisdiction of courts differs from the general administrative structure**.

40

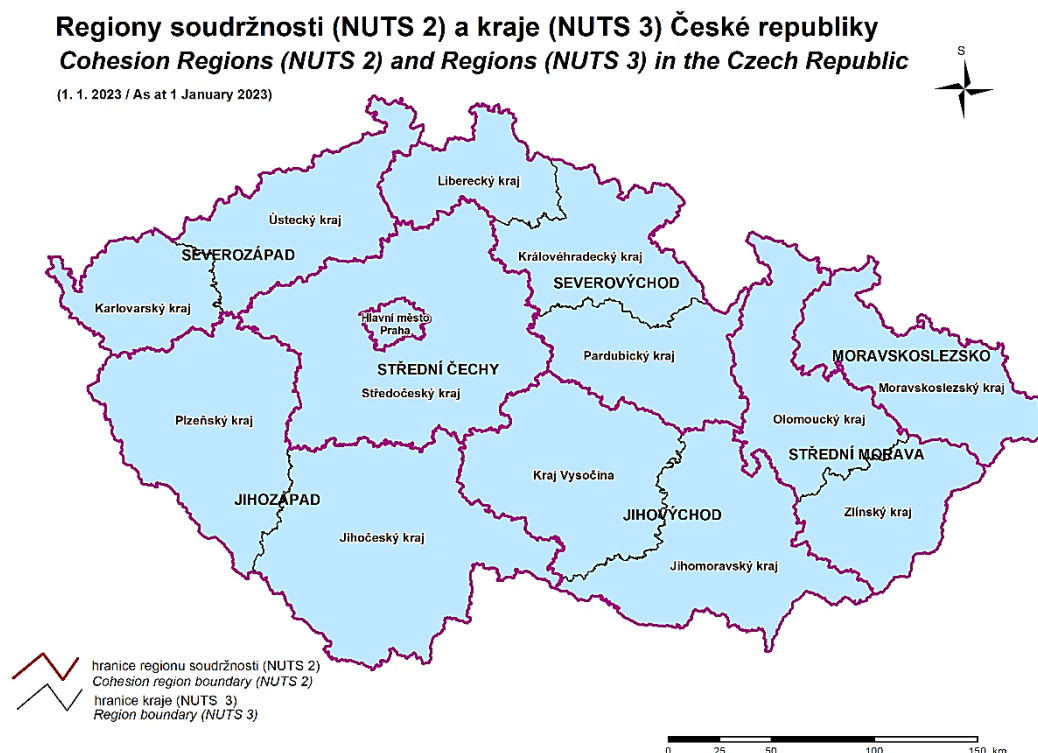
The **district courts** have jurisdiction over the territories of several municipalities. The precise and up-to-date delineation of these jurisdictions is provided in **Annex 3** to the **Act on Courts and Judges** [zákon č. 6/2002 Sb., o soudech a soudcích].

41

- 42 The **regional courts**, whose organisational structure predates the current general administrative division, do not entirely correspond to the modern administrative regions. Instead, they together constitute **eight regions**, and as such, these courts are as follows:
- Municipal Court in Prague [*Městský soud v Praze*]
 - Regional Court in Prague [*Krajský soud v Praze*]
 - Regional Court in České Budějovice [*Krajský soud v Českých Budějovicích*]
 - Regional Court in Plzeň [*Krajský soud v Plzni*]
 - Regional Court in Ústí nad Labem [*Krajský soud v Ústí nad Labem*]
 - Regional Court in Hradec Králové [*Krajský soud v Hradci Králové*]
 - Regional Court in Brno [*Krajský soud v Brně*]
 - Regional Court in Ostrava [*Krajský soud v Ostravě*]
- 43 Consequently, these courts oversee **territories that generally encompass multiple modern administrative regions**. To accommodate the newer administrative structure and facilitate better functioning of the system, the regional courts maintain **branches** in regional administrative capitals.²¹
- 44 The **high courts in Praha and Olomouc** have jurisdiction over the respective regional courts. **High Court in Prague** [*Vrchní soud v Praze*] exercises jurisdiction over all courts except for Brno and Ostrava, which fall under the jurisdiction of **High Court in Olomouc** [*Vrchní soud v Olomouci*].
- 45 The aforementioned judicial and administrative divisions may be further contextualised using **the EU's regional classification system** under the EU's Nomenclature of Territorial Units for Statistics.
- 46 The Czech Republic is divided into eight areas [*oblasti*, **NUTS 2**; outlined by the purple line in the image], each comprising one or more regions [*kraje*, **NUTS 3**; outlined by the black line in the image]. The NUTS3 classification corresponds to the administrative structure of the higher-level local authority previously discussed. However, it is essential to note that the NUTS2 classification does not correspond to either the historical division into eight regions or the court jurisdictions.

²¹ See Annex 5 and Annex 6 of the Act; even some district courts establish branches (see Annex 7 of the Act).

Figure 1: Cohesion Regions and Regions in the Czech Republic



Source: Český statistický úřad, Regiony soudržnosti (NUTS 2) a kraje (NUTS 3) České republiky, Link: <https://csu.gov.cz/regiony-soudrznosti-nuts-2-a-kraje-nuts-3-ceske-republiky>. Accessed 31 May 2025.

The classification is illustrated in the table below. NUTS 2 regions are italicised and presented in grey, while NUTS 3 regions, corresponding to the administrative divisions of the Czech Republic, are displayed in white and right-aligned.

Table 8: NUTS 2 and NUTS 3 Classification and Czech Regions

CZ, CZ0	ČESKÁ REPUBLIKA	CZECH REPUBLIC
CZ01	<i>Praha</i>	<i>Prague</i>
CZ010	Hlavní město Praha	Prague Capital City
CZ02	<i>Střední Čechy</i>	<i>Central Bohemia</i>
CZ020	Středočeský kraj	Central Bohemian Region
CZ03	<i>Jihozápad</i>	<i>South-West</i>
CZ031	Jihočeský kraj	South Bohemian Region
CZ032	Plzeňský kraj	Plzeň Region
CZ04	<i>Severozápad</i>	<i>North-West</i>
CZ041	Karlovarský kraj	Karlovy Vary Region
CZ042	Ústecký kraj	Ústí nad Labem Region
CZ05	<i>Severovýchod</i>	<i>North-East</i>
CZ051	Liberecký kraj	Liberec Region
CZ052	Královéhradecký kraj	Hradec Králové Region

Czech Legal and Institutional Framework for Parts B and C

CZ053	Pardubický kraj	Pardubice Region
CZ06	Jihovýchod	South-East
CZ063	Kraj Vysočina	Vysočina Region
CZ064	Jihomoravský kraj	South Moravian Region
CZ07	Střední Morava	Central Moravia
CZ071	Olomoucký kraj	Olomouc Region
CZ072	Zlínský kraj	Zlín Region
CZ08	Moravskoslezsko	Moravian Silesia
CZ080	Moravskoslezský kraj	Moravian-Silesian Region

Source: Eurostat, NUTS – Nomenclature of Territorial Units for Statistics, Available at: <https://ec.europa.eu/eurostat/web/nuts/overview>. Accessed 31 March 2025. Official translations and the format were further obtained from European Union, Country Compendium: A companion to the English Style Guide (July 2024), Available at: https://commission.europa.eu/document/download/2d706ca2-0927-4a58-a0f4-ae76aae2d84c_en. Accessed 31 March 2025.

2.3. Note on Personal Composition of Courts

- 49 While the court’s composition is particularly relevant for the main hearing, it also plays a crucial role during pre-trial proceedings. As discussed later in this Compendium, certain measures under Art 30 EPPO Regulation require court authorisation. Courts, for example, rule on matters such as custody on remand and other coercive measures. However, not all decisions are made by a full bench; some may be rendered by a judge sitting alone. It is crucial to identify the appropriate decision-making body and clearly understand the terminology used in the provisions cited throughout this Compendium, both to correctly submit applications and for defence counsel to safeguard their client’s rights effectively.
- 50 General provisions governing this matter for criminal proceedings can be found in s. 2(9) CCP, which claims that “In criminal proceedings before the court, decisions shall be made by a **bench** [*senát*] or a **judge sitting alone** [*samosoudce*]; the **presiding judge** [*předseda senátu*] may decide individually only where explicitly authorised by law. When the court of first instance is involved in pre-trial proceedings, the decision shall be **rendered by a judge** [*soudce*].”²² This is further amended especially by s. 14 CCP (newly in effect as of 1 January 2025) and ss. 31, 34 of the Act on Courts and Judges [zákon č. 6/2002 Sb., o soudech a soudcích]. Therefore, the subsequent distinction must be made in the terminology used by the CCP when referring to decision-making authorities:

²² § 2 (9) V trestním řízení před soudem rozhoduje senát nebo samosoudce; předseda senátu rozhoduje sám jen tam, kde to zákon výslovně stanoví. Rozhoduje-li v přípravném řízení soud v prvním stupni, rozhodnutí činí soudce.

Table 9: Terminology on Judiciary in Czech Criminal Proceedings

51

Title	Function
Court [soud]	This refers to the entire body, whether composed of a judge sitting alone [samosoudce] or a bench [senát] depending on the nature and stage of the proceedings.
Presiding judge [předseda senátu]	This refers to the presiding professional judge who may either lead a bench composed of professional and lay judges or a bench of three professional judges. ²³
Judge sitting alone [samosoudce]	This refers to a single judge acting independently , especially for the purposes of deciding on guilt and penalty in trial proceedings.
Judge [soudce]	This refers to the single judge from the district court who in pre-trial proceedings makes decisions, as stipulated by s. 26 CCP.

Source: The authors.

Furthermore, it is important **to differentiate between the composition of the court for the purposes of:**

52

a) Pre-trial Proceedings

In pre-trial proceedings, according to s. 2(9) CCP, decisions are **rendered by a judge** [soudce]. Specifically, as per s. 26 CCP, the district court within whose jurisdiction the public prosecutor (who submitted the relevant application) operates, shall have jurisdiction to carry out all acts in pre-trial proceedings. Once an application is submitted, **the court becomes competent to handle all judicial acts throughout the pre-trial proceedings** unless jurisdiction is transferred under the conditions outlined in s. 26(2) CCP.

53

Although the Czech Republic functions as a single jurisdictional district for EPPO purposes, the implications of s. 34c(1) of the Act on the Public Prosecutor's Office must be considered, particularly regarding **court jurisdiction in pre-trial proceedings**. This provision establishes that the designated prosecution office where a EDP **operates is deemed the office where the EDP is officially active**, which becomes relevant in cases where judicial competence is determined by the prosecutor's place of assignment. Notably, this applies to the execution of specific acts in pre-trial proceedings (s. 26 CCP),

54

²³ Please be advised that an interpretative provision, in effect since 1 January 2025, is contained in s. 12(5) of the Code of Criminal Procedure. It stipulates that any statutory reference to the presiding judge [předseda senátu] is to be construed as including a single judge [samosoudce], unless the nature of the matter clearly indicates otherwise. In practical terms, this means that a judge sitting alone exercises the full range of responsibilities ordinarily vested in a presiding judge. This provision must be borne in mind, and reference should be made only to up-to-date versions of the statute to ensure its correct application.

judicial review of complaints²⁴ against procedural decisions (s. 146a(1) and (2) CCP), and decisions on use of an agent (s. 158e CCP).

b) Trial Proceedings

- 55 In trial proceedings, the court is composed **either of a judge sitting alone** [*samosoudce*] or a **bench** [*senát*]. The bench may consist of either **a professional judge and two lay judges; or three professional judges**.
- 56 With regard to **district courts**, the relevant statutory amendments must be taken into consideration. Proceedings before district courts are to be conducted **exclusively by a judge sitting alone**. This stems from s. 34(2) first sentence of the Act on Courts and Judges which stipulates that the decision-making activities of the district court are performed by judges acting individually as judges sitting alone. This arrangement should be read in conjunction with s. 14(1) CCP which establishes the same for criminal courts.²⁵ This change, **effective from 1 January 2025**, follows the legislative overruling of the presidential veto – the first, and for a long time, the only veto exercised by President Petr Pavel.
- 57 Before 1 January 2025, district court benches could still include lay judges. Cases in which benches including lay judges began adjudication before that date are to be decided by those same benches, including lay judges, even after the change took effect.
- 58 The amendment has stirred considerable controversy, mirroring debates from previous legislative attempts, notably under the Minister Marie Benešová,²⁶ which were ultimately halted by the Senate.²⁷ Despite objections from various institutions,²⁸ the Chairman of the Legislative Council of the Government [*Legislativní rada vlády*] opted not to refer the draft to its plenary session.²⁹ This development raises broader questions about the role and future of lay judges in the Czech legal system.
- 59 As for **regional courts**, their composition is generally governed by s. 31(2) of the Act on Courts and Judges [zákon č. 6/2002 Sb., o soudech a soudcích], according to which benches are composed of a presiding judge [předseda senátu] and two lay judges [přisídící] when acting as courts of **first instance in criminal matters**. However, in certain cases, a *lex specialis* under the CCP applies, allowing for adjudication by a judge

²⁴ Please note the distinction between a complaint [*stížnost*] and a criminal complaint [*trestní oznámení*], as discussed under Part B.II, Art 26 EPPO Regulation, Chapter 2.2.7, letter c, i).

²⁵ Act on Courts and Judges: § 34 (2) Rozhodovací činnost okresního soudu vykonávají soudci jako samosoudci. Criminal Procedure Code: § 14 (1) U okresního soudu koná řízení samosoudce.

²⁶ Available at: <https://www.ceska-justice.cz/2019/05/nejvyssi-soud-odmita-ruseni-laickych-prisedicich-navrhu-je-omezeni/>. Accessed 1 January 2024.

²⁷ Available at: <https://www.psp.cz/sqw/historie.sqw?o=8&t=630>. Accessed 10 January 2024.

²⁸ Available at: <https://www.zakonyprolidi.cz/monitor/7715347.htm>, pp. 12–13, 15–18. Accessed 30 March 2024.

²⁹ Statement of the Chairman of the Legislative Council of the Government No 839/2023 of 23 November 2023.

sitting alone. Benches are composed of a presiding judge and two professional judges **in other cases** (e.g. appellate proceedings).

Therefore, regional courts **continue** to include benches with lay judges. The newly effective s. 14(2) CCP imposes limitations compared to the previous arrangement. First-instance proceedings involving **particularly serious felonies must be conducted by a bench** [*senát*], except for particularly serious felonies listed in Part Two, Chapters V and VI of the Criminal Code, and the criminal offence of infanticide under s. 142 CC. In all other first-instance proceedings, **a judge sitting alone** [*samosoudce*] **presides** (Section 14(3) CCP).

60

3. AFCOS: OLAF's Partner in the Czech Republic

Effective combating of PIF offences requires cooperation between national authorities and OLAF. In this respect, Anti-Fraud Coordination Service (hereinafter "AFCOS") plays a key role in ensuring coordination and information exchange. As such, AFCOS supports investigations and facilitates communication between OLAF and the relevant Czech institutions, including police, prosecution offices, and other administrative bodies.

61

Refer to Part C of this Compendium and to Art 12a OLAF Regulation for organisational structure and details.



4. The Relationship Between the EPPO and OLAF

As this compendium explores the EPPO and OLAF in relation to national law, their cooperation will be briefly addressed. However, as the primary focus is on national legal frameworks, and their interaction is governed by international provisions, namely Art 101 EPPO Regulation, which defines their institutional relationship to safeguard the financial interests of the European Union, a detailed discussion falls outside the scope of this work. Since this provision concerns EU law rather than national specifics, it is referenced here only briefly and not in the subsequent chapters examining specific provisions of the EPPO Regulation.

62

Beyond requiring the **EPPO and OLAF** to establish and maintain a **close working relationship** (Art 101(1) EPPO Regulation), a key aspect of their interaction concerns the precedence of investigations and their mutual coordination. According to Art 101(2), when the EPPO conducts a **criminal investigation, OLAF is prohibited from opening a parallel administrative investigation into the same facts**. This provision ensures that **criminal investigations take precedence** over administrative inquiries, thereby

63

avoiding duplication of efforts and potential conflicts between the two bodies, thus respecting the principle *ne bis in idem*.³⁰

- 64 Nonetheless, this does **not** constitute an absolute **bar to OLAF's involvement** in cases under EPPO's jurisdiction. Under Art 101(3) EPPO Regulation, the **EPPO may request OLAF to support or complement its activities** during an investigation. This support can include providing information, analyses (including forensic analyses), and expertise, operational support, facilitating coordination between competent national administrative authorities and EU bodies, or conducting administrative investigations in accordance with its mandate.
- 65 The **EPPO may request OLAF to conduct complementary administrative investigations** to assist in criminal proceedings. This may be the case insofar as it remains within OLAF's mandate and does not circumvent the legal framework governing criminal investigative measures or the involvement of national authorities. This mechanism facilitates OLAF's contribution to the overall protection of the EU's financial interests.
- 66 Furthermore, if the EPPO **decides not to open an investigation or to dismiss a case**, Art 101(4) provides that the EPPO may share relevant information with OLAF, allowing OLAF to consider **appropriate administrative follow-up actions** in line with its mandate.
- 67 Additionally, Art 101(5) grants the **EPPO indirect access** to information stored in **OLAF's case management system** through a **hit/no-hit system**. When data entered by the EPPO matches data held by OLAF, the system notifies both institutions of the match without compromising the confidentiality of ongoing investigations.
- 68 By delineating their respective competences and cooperation mechanisms, Art 101 EPPO Regulation ensures that both the EPPO and OLAF operate in a coordinated manner, effectively balancing criminal prosecution and administrative enforcement to safeguard the EU's financial interests.

III. Sources of Law in the Czech Republic

- 69 As the legal system of the Czech Republic is rooted in the continental (civil law) tradition, written legal norms serve as the primary source of authority. Since the developments after 1989 and accession to the European Union, the Czech Republic and its legal framework have undergone significant transformations so as to comply with international legal obligations.
- 70 This overview examines the key sources of law in the Czech Republic, highlighting their hierarchy, authority, and interaction within the broader legal system. The subsequent

³⁰ See also Grodzev et Dianese, p. 281.

chapters then provide a list of relevant Czech statutes applicable to the topics discussed in Parts B and C.

Czech statutes are freely accessible online to all readers. As of 1 January 2024, the Collection of Statutes [*Sbírka zákonů*] and the Collection of International Treaties [*Sbírka mezinárodních smluv*] have been **merged into a unified Collection of Statutes and International Treaties** [*Sbírka zákonů a mezinárodních smluv*], in accordance with the repeatedly postponed Act on the Collection of Statutes and International Treaties and on the Drafting of Legal Regulations Published in the Collection of Statutes and International Treaties.³¹

The Collection serves not only as the official platform for publishing binding statutes, but also, due to its publication online, has become an important source of information. The unified collection is now **available through the electronic system Elektronická Sbírka zákonů a mezinárodních smluv** (e-Sbírka, <https://www.e-sbirka.cz/>), providing access to both amending statutes and consolidated versions. Users are advised to avoid relying on previous tools, such as the Ministry of Interior's online platform (<https://aplikace.mvcr.cz/sbirka-zakonu/>), as they are no longer updated.

1. Overview of Formal Sources of Law

The Czech Republic recognises the following formal sources of law:

a) Constitutional Laws [*ústavní zákony*]

These constitute the highest-ranking source of law, with which all statutes must comply. Together, they form the so-called **constitutional order** [*ústavní pořádek*]. In accordance with Art 112(1) of the Constitution, this comprises the Constitution,³² the Charter of Fundamental Rights,³³ constitutional acts adopted pursuant to the Constitution, and some constitutional acts enacted by the legislative predecessors of the Czech Parliament.³⁴ These include constitutional acts of the National Assembly of the Czechoslovak Republic, the Federal Assembly of the Czechoslovak Socialist Republic, and the Czech

³¹ Zákon č. 222/2016 Sb., o Sbírce zákonů a mezinárodních smluv a o tvorbě právních předpisů vyhlášených ve Sbírce zákonů a mezinárodních smluv.

³² Ústavní zákon č. 1/1993 Sb., Ústava České republiky.

³³ Usnesení předsednictva České národní rady o vyhlášení Listiny základních práv a svobod jako součásti ústavního pořádku České republiky (ústavní zákon č. 2/1993 Sb.).

³⁴ **Článek 112**

(1) Ústavní pořádek České republiky tvoří tato Ústava, Listina základních práv a svobod, ústavní zákony přijaté podle této Ústavy a ústavní zákony Národního shromáždění Československé republiky, Federálního shromáždění Československé socialistické republiky a České národní rady upravující státní hranice České republiky a ústavní zákony České národní rady přijaté po 6. červnu 1992.

(2) Zrušují se dosavadní Ústava, ústavní zákon o československé federaci, ústavní zákony, které je měnily a doplňovaly, a ústavní zákon České národní rady č. 67/1990 Sb., o státních symbolech České republiky.

(3) Ostatní ústavní zákony platné na území České republiky ke dni účinnosti této Ústavy mají sílu zákona.

National Council regulating the state borders of the Czech Republic, as well as constitutional acts of the Czech National Council adopted after 6 June 1992.

- 75 This way of constructing the intricate tapestry of constitutional order required some acts being **repealed**, including the previous constitution (Art 112(2) of the Constitution). Furthermore, constitutional acts that were in force in the Czech Republic on the **effective date** of the current Constitution retain the status of ordinary statutes, unless they fall within one of the categories previously mentioned (Art 112(3) of the Constitution). In addition, the case law of the Constitutional Court has established that duly promulgated **international human rights treaties form part of the constitutional order**, thereby tacitly expanding its scope.³⁵

b) International Treaties [*mezinárodní smlouvy*]

- 76 Only those international treaties that have been duly **promulgated, received parliamentary consent for ratification and which are binding on the Czech Republic**, form a part of the legal order of the Czech Republic.³⁶ Therefore, ministerial or governmental international treaties do not constitute a binding part of the legal order.
- 77 The ratification of certain international treaties is **subject to special rules**. Treaties governing the rights and obligations of individuals, those of an allied, peace-related, or other political nature, and other specified categories (see Art 49 of the Constitution) require the consent of both chambers of Parliament. In such cases, the Senate's decision cannot be overruled by the Chamber of Deputies.

c) EU Law

- 78 Both primary and binding secondary EU law **take precedence over Czech statutes**. However, the Constitutional Court, in a manner similar – though not identical – to the German Federal Constitutional Court in *Solange I* and *Solange II*, has adopted the *ultra vires* doctrine, asserting its authority to limit this precedence in certain circumstances.³⁷ This reflects the Court's willingness to deviate from absolute primacy where fundamental constitutional principles are at risk.

d) Statutes (Acts of Parliament) [*zákony*]

- 79 Statutes constitute **the most extensive source** of binding legal norms in the Czech Republic and serve as the primary framework for regulating the subject matter covered in

³⁵ See the decision of the Constitutional Court No Pl. ÚS 36/01 of 25 June 2002. This decision has generated controversy, as there is no constitutional procedure for adopting such treaties – the process applicable to the enactment of ordinary legislation suffices for international treaties. Moreover, it remains unclear what qualifies as a human rights treaty at any given time. Furthermore, the Constitutional Court, in issuing this ruling, ceased to function as a purely negative legislator [*negativer Gesetzgeber*].

³⁶ **Článek 10**

Vyhlášené mezinárodní smlouvy, k jejichž ratifikaci dal Parlament souhlas a jimiž je Česká republika vázána, jsou součástí právního řádu; stanoví-li mezinárodní smlouva něco jiného než zákon, použije se mezinárodní smlouva.

³⁷ See, *inter alia*, the decision of the Constitutional Court No Pl. ÚS 5/12 of 31 January 2012.

this compendium. As a fundamental requirement, all statutes must comply with constitutional laws.

Statutes are **enacted by the Parliament of the Czech Republic**. The legislative process follows general procedures, though specific rules apply to certain categories of statutes, such as those concerning national security, electoral matters, and other specialised areas. Additionally, the **President of the Republic holds the power of a suspensive veto**, allowing him or her to return a bill to the Chamber of Deputies for reconsideration, except in cases where the Constitution explicitly excludes this power (e.g. constitutional laws). 80

The **legislative process** is enshrined in ss. 39–52 of the Constitution, see further the Act on the Rules of Procedure of the Chamber of Deputies [zákon č. 90/1995 Sb., o jednacím řádu Poslanecké sněmovny] and Act on the Rules of Procedure of the Senate [zákon č. 107/1999 Sb., o jednacím řádu Senátu]. 81

The adoption of an electoral statute, a statute on the principles governing the proceedings and mutual relations of both parliamentary chambers, as well as their external interactions, and a statute on the Rules of Procedure of the Senate **requires approval by both the Chamber of Deputies and the Senate**, i.e. the Senate's decision cannot be overruled (see Art 40 of the Constitution). 82

In rendering decisions, **a judge is bound by statute and by any international treaty that forms part of the legal order** (see above sub b)). The judge is also authorised to assess the conformity of other legal regulations with statutes or with an international treaty binding as a statute (see Art 95(1) of the Constitution). In contrast, constitutional judges are bound solely by the constitutional order and the law governing the operation of the Constitutional Court (see Art 88(2) of the Constitution). For an overview of the most relevant statutes for the matter at hand, see below Part A.III, Chapters 2 and 3. 83

e) Secondary Legislation

Czech secondary legislation encompasses a broad range of subordinate acts that must adhere to the principle *secundum et intra legem*. Obligated to comply with and operate within the framework set by statutory law, these acts serve to elaborate on legislative provisions, ensuring their effective implementation and addressing technical or procedural details that may not be explicitly covered in primary legislation. 84

The primary forms of secondary legislation in the Czech Republic are **governmental regulations** [*nařízení vlády*] and **ministerial decrees** [*vyhlášky ministerstev*]. Governmental regulations are adopted by the government as a whole and are typically issued under an explicit delegation of legislative power provided by statute. Their scope often covers broad regulatory matters which affect multiple sectors. By contrast, ministerial decrees are issued by individual ministries or other central administrative authorities and 85

are generally more specific in nature, regulating a subject matter falling within the scope of the ministry.

- 86 Although secondary legislation plays a crucial role in the functioning of the legal system, it remains **subject to judicial review**, particularly by the Constitutional Court, which ensures its compliance with constitutional and statutory provisions (see Art 87(1)(b) of the Constitution and in detail, ss. 64 et seq. of the Act on the Constitutional Court).³⁸ Utilisation of governmental regulations in criminal matters has been repeatedly subject to scrutiny by the Constitutional Court. The Court annulled s. 289(3) CC, which unconstitutionally delegated to the government the power to define a “quantity greater than small” for regulated substances – an issue the Court ruled must be explicitly determined by the legislature to uphold legal certainty and the principle of legality in criminal law.³⁹

f) Judicial Decisions

- 87 While the Czech Republic does not have a formal system of judicial precedent (as in common law systems), certain judicial decisions, particularly those of higher courts, have **persuasive authority**. The only exception, where judicial decisions are binding not only on the parties to the case but also on all public authorities and courts, are **judgments [nálezy] of the Constitutional Court**, which feature *erga omnes* effect. These rulings must be followed in subsequent cases, particularly when they annul legislation or interpret constitutional provisions. This applies, for instance, to the previously mentioned Constitutional Court decision that repealed certain provisions of the Criminal Code.
- 88 As previously discussed regarding decisions within the Czech judicial system, certain rulings are published in **official collections**, which carry a formally stronger authority. This means they have undergone a process of scrutiny and analysis before publication, rather than merely being made available online. However, with many judicial decisions now accessible digitally, the significance of these collections has somewhat diminished.
- 89 The Czech Republic has maintained a distinctive judicial practice dating back to the 1950s – the highest judicial authorities can publish so-called **standpoints [stanovisko]**, which serve to unify case law. These are issued by the Supreme Court and the Supreme Administrative Court.⁴⁰ They provide authoritative guidance on legal interpretation and

³⁸ Zákon č. 182/1993 Sb., o Ústavním soudu.

³⁹ See the decision of the Constitutional Court No Pl. ÚS 98/20 (206/2021 Coll.) of 27 April 2021; or similarly, the decision of the Constitutional Court No Pl. ÚS 13/12 (259/2013 Coll.) of 23 July 2013.

⁴⁰ See s. 14(3) of the Act on Courts and Judges [zákon č. 6/2002 Sb., o soudech a soudcích], and Arts 32–39 of the Rules of Procedure of the Supreme Court. Available at: https://www.nsoud.cz/fileadmin/user_upload/Organizacni-dokumenty/Jednaci_rad.pdf. Accessed 31 March 2025. With regard to the Supreme Administrative Court, please note s. 12(2) of Administrative Procedure Code [zákon č. 150/2002 Sb., soudní řád správní] and Arts 50–61 of the Rules of Procedure of the Supreme Administrative Court. Available at: https://www.nssoud.cz/fileadmin/user_upload/dokumenty/organizacni-dokumenty/jednaci_rad_2014.pdf. Accessed 31 March 2025.

ensure consistency across lower courts. Although not legally binding in the way precedent operates in common law systems, they exert substantial influence on judicial decision-making and are generally followed in practice.

This approach presents a certain paradox: while the Czech Republic adheres to the continental legal tradition, which traditionally opposes binding case law, it has nonetheless **developed a system where a collegium of judges issues abstract, generalised interpretations of law**. This method of judicial unification, despite its practical benefits, arguably moves the system closer to a *de facto* precedent-based approach, blurring the line between strict statutory interpretation and judicial law-making.

90

2. Key Statutes on PIF Offences and the EPPO (Part B)

- Criminal Code [zákon č. 40/2009 Sb., trestní zákoník]
- Criminal Procedure Code [zákon č. 141/1961 Sb., trestní řád]
- Act on the Public Prosecutor's Office [zákon č. 283/1993 Sb., o státním zastupitelství]
- Act on International Judicial Cooperation in Criminal Matters [zákon č. 104/2013 Sb., o mezinárodní justiční spolupráci ve věcech trestních]
- Act on Criminal Liability of Legal Persons and Proceedings Against Them [zákon č. 418/2011 Sb., o trestní odpovědnosti právnických osob a řízení proti nim]
- Juvenile Justice Act [zákon č. 218/2003 Sb., o odpovědnosti mládeže za protiprávní činy a o soudnictví ve věcech mládeže a o změně některých zákonů (zákon o soudnictví ve věcech mládeže)]
- Act on the Criminal Record [zákon č. 269/1994 Sb., o Rejstříku trestů]
- Act on the Implementation of International Sanctions [zákon č. 69/2006 Sb., o provádění mezinárodních sankcí]
- Act on the Use of Financial Resources from Property Penalties Imposed in Criminal Proceedings and on Amendments to Certain Acts [zákon č. 59/2019 Sb., o použití peněžních prostředků z majetkových trestních sankcí uložených v trestním řízení]
- Act on Experts, Expert Offices, and Expert Institutes [zákon č. 254/2019 Sb., o znalcích, znaleckých kancelářích a znaleckých ústavech]
- Constitution of the Czech Republic [ústavní zákon č. 1/1993 Sb., Ústava České republiky]
- Act on the Rules of Procedure of the Chamber of Deputies [zákon č. 90/1995 Sb., o jednacím řádu Poslanecké sněmovny]
- Act on the Rules of Procedure of the Senate [zákon č. 107/1999 Sb., o jednacím řádu Senátu]
- Act on Courts and Judges [zákon č. 6/2002 Sb., o soudech a soudcích]
- Act on the Ombudsman [zákon č. 349/1999 Sb., o Veřejném ochránci práv]

91

- Act on the Central Register of Accounts [zákon č. 300/2016 Sb., o centrální evidenci účtů]
- Act on the Processing of Personal Data [zákon č. 110/2019 Sb., o zpracování osobních údajů]
- Electronic Communications Act [zákon č. 127/2005 Sb., o elektronických komunikacích]
- Act on the Police of the Czech Republic [zákon č. 273/2008 Sb., o Policii České republiky]
- Legal Profession Act [zákon č. 85/1996 Sb., o advokacii]
- Charter of Fundamental Rights and Freedoms [Listina základních práv a svobod, vyhlášena formou zvláštního usnesení Předsednictva ČNR č. 2/1993 Sb.]
- Act on Free Access to Information [zákon č. 106/1999 Sb., o svobodném přístupu k informacím]

3. Key Statutes on PIF Offences and the EPPO (Part C)

- 92
- Act on the Coordination of Cooperation with OLAF [zákon č. 34/2023 Sb., o koordinaci spolupráce s Evropským úřadem pro boj proti podvodům]
 - Administrative Code [zákon č. 500/2004 Sb., správní řád]
 - Inspection Code [zákon č. 255/2012 Sb., o kontrole]
 - Customs Act [zákon č. 242/2016 Sb., celní zákon]
 - Act on the Customs Administration of the Czech Republic [zákon č. 17/2012 Sb., o celní správě České republiky]
 - Income Tax Act [zákon č. 586/1992 Sb., o daních z příjmů]
 - VAT Act [zákon č. 235/2004 Sb., o dani z přidané hodnoty]
 - Tax Code [zákon č. 280/2009 Sb., daňový řád]
 - Act on International Assistance in the Administration of Taxes [zákon č. 164/2013 Sb., o mezinárodní spolupráci při správě daní]
 - Act on the Regional Development Support [zákon č. 248/2000 Sb., o podpoře regionálního rozvoje]
 - Act on the Central Register of Accounts [zákon č. 300/2016 Sb., o centrální evidenci účtů]
 - Financial Inspection Act [zákon č. 320/2010 Sb., o finanční kontrole]
 - Act on the Financial Administration of the Czech Republic [zákon č. 456/2011 Sb., o finanční správě České republiky]
 - Criminal Code [zákon č. 40/2009 Sb., trestní zákoník]
 - Criminal Procedure Code [zákon č. 141/1961 Sb., trestní řád]
 - Act on Agriculture [zákon č. 252/1997 Sb., o zemědělství]
 - Act on Regions [zákon č. 129/2000 Sb., o krajích]

- Act on the Support of Research and Innovation [zákon č. 130/2002 Sb., o podpoře výzkumu a vývoje]
- Act on the State Agricultural Intervention Fund [zákon č. 256/2000 Sb., o Státním zemědělském intervenčním fondu]
- Act on the Competence of the Office for the Protection of Competition [zákon č. 273/1996 Sb., o působnosti Úřadu pro ochranu hospodářské soutěže]
- Act on Banks [zákon č. 21/1992 Sb., o bankách]
- Act on Budget Rules [zákon č. 218/2000 Sb., o rozpočtových pravidlech]
- Public Procurement Act [zákon č. 134/2016 Sb., o zadávání veřejných zakázek]
- Act on the Execution of the Seizure of Property and Items in Criminal Proceedings [zákon č. 279/2003 Sb., o výkonu zajištění majetku a věcí v trestním řízení]
- Act on Payment Systems [zákon č. 370/2017 Sb., o platebním styku]
- Act on Savings and Credit Cooperatives [zákon č. 87/1995 Sb., o spořitelních a úvěrních družstvech]
- Act on Conflict of Interests [zákon č. 159/2006, Sb., o střetu zájmů]
- Civil Service Act [zákon č. 234/2014 Sb., o státní službě]
- Act on the Supreme Audit Office [zákon č. 166/1993 Sb., o Nejvyšším kontrolním úřadu]
- Administrative Procedure Code [zákon č. 150/2002 Sb., soudní řád správní]
- Whistleblowers Protection Act [zákon č. 171/2023 Sb., o ochraně oznamovatelů].

B. EPPO Regulation

I. Initiating Criminal Investigations under the EPPO Regulation and National Law

1. Introduction

Authors: Prof. JUDr. Jiří Jelinek, CSc. & Mgr. Tereza Ottová (Czech Republic)



In the Czech context, the office of the public prosecutor has been inevitably conjoined with fiscal matters since mediaeval times.⁴¹ The earliest recorded instance of this office dates back to the times of the **Hussite Movement in 1416**, when the prosecutor's rights and duties were conferred upon a certain Sezema of Hořešovice. The office was later formally established by **Emperor Sigismund**.⁴² At that time – still called a *procurator* due to the substantial influence of Roman law rather than a prosecutor – had the jurisdiction to defend the king and his *fiscus* and engage in all court matters he deemed fit (from the Latin *prō-cūro*, meaning “to take care of, attend to, look after”).⁴³

1

It comes as no surprise that an institution once essential for the **Kingdom of Bohemia** is in the era of postmodernism and transnationalism relevant to supranational entities. The transfer of resources between individuals and states not only offers opportunities for growth and investment but also creates an environment **conducive to financial and property crime**.

2

Whether through the free movement of people and goods, the Schengen area, or other social innovations of the modern era, such as the rapid expansion of information and communication technologies and the Internet, the landscape of crime has grown more complex. The regulation of criminal law at the state level appeared to be wanting. Individual states face a wide array of challenges, including transnational crime, cybercrime and clandestine criminal activities linked to hybrid warfare. So as to make investigation and prosecution more effective, these developments necessitated **closer cooperation between states**.

3

The establishment of the EPPO was envisioned as a tool to address this need. However, criminal law – both substantive and procedural – remains intrinsically linked to the exclusive sovereignty of each state. The primacy of state authority within its territory guarantees non-interference by foreign powers in its jurisdiction and exercise of power.

4

⁴¹ Under current Czech legislation, the office of the public prosecutor [*veřejný žalobce*] is held, and its powers are exercised, by state prosecutors [*státní zástupce*] – or so it would be rendered in a literal translation. So as to keep the text in accordance with the EPPO Regulation and regular Czech translations, the text hereinafter uses the term “public prosecutor” to refer to Czech prosecutors as well.

⁴² Otto 1903, pp. 756–760.

⁴³ [a] Malý et al. 2003, pp. 66–67.

[b] For an overview of the development of the Czech prosecutorial system, see Schelle 2008, pp. 44–53.

[c] Lewis and Short 1891, p. 1454.

- 5 The **European Union and its legal system**, by its nature, interacts with but does not infringe upon national sovereignty, rather complementing it in a specific manner. Creating a prosecutor's office that operates beyond national borders and legal systems required both widespread agreement and changes to national laws. The Czech Republic performed this transformation chiefly through **Act No 315/2019 Coll.**, amending the Act on the Public Prosecutor's Office, the Criminal Procedure Code, the Criminal Code and several other acts, such as the Act on International Judicial Cooperation in Criminal Matters and the Act on the Criminal Record.⁴⁴ Furthermore, the Czech Republic has long been preparing for the recodification of criminal procedural law, which envisions modifications of pre-trial proceedings.
- 6 As Petr Klement, the European Public Prosecutor for the Czech Republic, noted in an interview, the office demonstrates considerable effectiveness in addressing crimes with an international element. The concept of the EPPO as **a single international office** simplifies and enhances cooperation significantly.⁴⁵ Nonetheless, the European Union comprises 27 diverse countries and the EPPO, combining both national and international elements, is expected to reflect regionally specific considerations. Czech criminal procedure, in some respects, provides an extraordinary example of this interplay.
- 7 The Regulation operates with **two fundamental concepts** related to criminal proceedings: investigation and prosecution. In the Czech version of the Regulation, these procedural terms are respectively translated as “vyšetřování” and “trestní stíhání”. However, those familiar with Czech criminal procedural law recognise that interpreting these terms and implementing them in practice presents challenges, as they do not fully align with the concepts in Czech criminal procedure.
- 8 According to Act No 141/1961 Coll., on Criminal Procedure (hereinafter “CCP”), the **pre-trial proceedings** are divided into the procedure prior to the commencement of investigation [*postup před zahájením trestního stíhání*] and investigation [*vyšetřování*].⁴⁶ The procedure prior to the commencement of investigation is initiated by the drawing up of an official record on the commencement of pre-trial proceedings or, in exceptional circumstances, by the performance of urgent and unrepeatable actions by the respective law enforcement agency (s. 158(3) CCP). This phase may **conclude in several ways**, including discontinuance, referral of the case, or temporary deferral of the criminal investigation (see s. 159a and s. 159b CCP).

⁴⁴ The original Czech text can be found under “zákon, kterým se mění zákon č. 283/1993 Sb., o státním zastupitelství, ve znění pozdějších předpisů, zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád), ve znění pozdějších předpisů, zákon č. 40/2009 Sb., trestní zákoník, ve znění pozdějších předpisů, a některé další zákony”.

⁴⁵ Šťastný 2022, p. 7.

⁴⁶ Procedure prior to the commencement of investigation is also commonly referred to as “verification” [*prověřování*]. For a discussion on the rationale behind the use of these specific terms, see Part B, Art 26 EPPO Regulation, Chapter 2.2.1.

Only when the facts ascertained and substantiated during the procedure prior to the commencement of investigation indicate that a criminal offence has been committed and there are **sufficient grounds** to conclude that a specific individual is responsible, does the law enforcement agency proceed **to initiate a criminal investigation against the accused**. The issuance of a resolution on the initiation of a criminal investigation against the accused marks the beginning of the second part of the pre-trial proceedings: the investigation (s. 160 CCP). The EPPO Regulation, however, does not recognise this bipartite concept. Instead, it considers most or all of the procedure prior to the commencement of investigation as part of the investigation phase, diverging significantly from Czech procedural law. This divergence creates linguistic and semantic ambiguities, with further implications for the authorities involved in criminal proceedings and the legal instruments available to them.⁴⁷

9

This is closely related to the issue of the **equality of conditions** in individual Member States, including the Czech Republic. There is a different scope of instruments available to the Czech authorities during the procedure prior to the commencement of investigation and during the investigation (s. 158(3) CCP, s. 164(1) CCP, s. 89(1) CCP).

10

For example, with limited exceptions, it is not permissible to **obtain from the accused a statement admissible in court** as evidence during the procedure **prior** to the commencement of investigation; such statements may only be obtained **during the investigation phase** (s. 158(6) *in fine* CCP, s. 211 CCP). As a result of this division into two parts, the accused in the Czech Republic may enjoy greater rights compared to those in other jurisdictions. Similarly, it is uncommon among EU Member States to require a detailed resolution on the initiation of a criminal investigation against the accused, which must include comprehensive information about the alleged offence, the reasoning behind its legal qualification and a listing of relevant evidence. This practice ensures a higher standard of protection for the accused.

11



Furthermore, different states impose varying conditions for conducting **a search** of a dwelling or non-residential premises (s. 83 CCP), or for the wiretapping and recording of telecommunications traffic (s. 88 CCP). What requires approval from a public prosecutor in one state may necessitate judicial authorisation in another. Under the Czech CCP, a search warrant for premises in pre-trial proceedings could have been previously issued by a public prosecutor or a law enforcement agency. Currently, such warrants generally require judicial approval (s. 83 CCP). While evidence obtained with the consent of only a public prosecutor **would be inadmissible** in domestic criminal proceedings under Czech law, it might still be **deemed valid in proceedings carried out by an European Delegated Prosecutor** (hereinafter “EDP”) in another Member State. Similarly, various EU Member States provide different types of remedies and operate with

12



⁴⁷ Sotolář et Růžicka 2022, pp. 326–327.

differing scopes of both ordinary and extraordinary legal remedies. Although cases prosecuted by an EDP reflect a transnational framework, they remain substantially governed by the national laws of the respective Member State.

- 13 The amending statute also **restricted** the Supreme Prosecutor's **ability to file an extraordinary remedy** based on cassation (s. 174a CCP). Previously, this mechanism allowed the Supreme Prosecutor to annul unlawful decisions of lower public prosecutors not to prosecute the suspect pursuant to s. 159d(1) CCP, not to investigate the suspect, or to refer a case to other authorities, provided this was done within three months of the unlawful decision becoming final. If EDPs make such decisions, these orders are not served to the Supreme Prosecutor and the Supreme Prosecutor is not authorised to annul such orders (s. 173a CCP, s. 174a CCP).⁴⁸ Consequently, domestic and EPPO cases will follow **slightly different procedural standards**.
- 14 Additionally, not all jurisdictions provide the same range of procedural **diversions** as the Czech Republic; for instance, it is not possible to negotiate a plea agreement under Austrian law. Beyond procedural differences, challenges may also arise from **divergent definitions** of specific crimes across jurisdictions, such as when prosecuting complex tax carousel fraud. On the substantive level, another challenge is posed by the **criminal liability of legal persons**. While this concept is not unfamiliar in Czech law, general criminal liability for legal persons was only introduced in 2012, meaning practice and experience in this area are still developing. Unlike the Czech Republic, where such liability is concurrent, independent, genuine and subjective, other states may adopt different models.⁴⁹
- 15 Another issue is the question of loyalty. With **decentralisation**, the concern inevitably arises as to whether the EPPO is, in Goldoni's words, "the servant of two masters". EPPO prosecutors remain part of their national systems while working for the Office on cases related to the EU's financial interests, under the control and supervision of the European Prosecutor. Czech legislators have addressed this issue by stipulating that temporary assignment to the EPPO occurs *ex lege* upon appointment to the post of EP/EDP and this assignment lasts for the duration of their mandate (s. 34b of the Act on the Public Prosecutor's Office, hereinafter "StZast").
- 16 Although the statute provides that if a public prosecutor appointed as an EDP is not fully assigned to the EPPO, they continue to perform their duties as a national prosecutor, in practice, EPPO prosecutors work exclusively for the EPPO. This effectively eliminates any material conflict of interest that could arise from their dual mandate. The public prosecutor's office designated as the place of performance of the EDP functions is rec-

⁴⁸ See similarly Růžička 2023, p. 72.

⁴⁹ Cf. Jelínek 2019, pp. 175 et seq.

ognised as the competent public prosecutor's office for all purposes, including jurisdiction over law enforcement agencies (s. 34c StZast, CCP). **Jurisdictional disputes** between public prosecutors and EDPs are resolved, to the extent permitted by the Regulation, by the Supreme Prosecutor's Office (s. 34g StZast).

In the well-known symbol of Justice, where she is depicted as a woman holding balance scales in one hand and a sword in the other, the function of Justice is symbolised as "the sword of reproof".⁵⁰ Recently, Justice has been equipped with a new instrument: the EPPO. Czech criminal procedural law provides a **well-structured, reliable framework** for supporting the operation of this institution. It offers a high standard of human rights protection while being complemented by effective investigative measures. If the EPPO opts to pursue a case before Czech courts, every premise for the balanced furnishment of Justice should be guaranteed.

17

⁵⁰ Kallab 1915, p. 4.

2. Article 26 Initiation of Investigations

2.1. Introductory Remarks	80
2.2. Procedural Matters	83
2.2.1. Initiation of Investigation (Paragraph 1)	83
a) Proceedings Prior to Investigation	85
b) Investigation	86
2.2.2. Sources Indicating Offences Within EPPO Competence.....	89
a) Private Persons	90
b) Law Enforcement Agencies and State Authorities.....	93
2.2.3. Determination of Competence.....	94
2.2.4. Conflicts of Competence	95
2.2.5. Actions Following the Decision to Open a Case.....	96
2.2.6. The Term “the Accused” in Czech Criminal Proceedings	97
a) A Suspect [<i>podezřelý</i>].....	97
b) An Accused [<i>obviněný</i>]	98
c) A Defendant [<i>obžalovaný</i>].....	98
2.2.7. Rights of the Person Against Whom Proceedings Are Conducted	99
a) Constitutional Guarantees	100
b) The Code of Criminal Procedure.....	102
c) Right to Defence.....	102
d) A Convicted Person [<i>odsouzený</i>]	98
i. Right to Submit a Complaint Against a Decision	103
ii. Right to Submit a Complaint Against Inappropriate Conduct..	105
iii. Other Rights of the Accused	105
e) Defence Counsel in Criminal Procedure	106
f) Rights and Duties of Defence Counsel.....	113
2.2.8. Access to National Case File.....	115
2.3. Substantive Matters.....	117
2.3.1. Foundations of Criminal Liability	118
a) Elements of a Criminal Offence	119
b) Misdemeanours and Felonies	123
c) Participation of Multiple Persons in a Criminal Offence	123
d) Stages of a Criminal Offence	124
2.3.2. Overview of Relevant Provisions from the General Part of CC	125
2.3.3. Criminal Liability of Legal Persons	126
a) Jurisdiction	127
b) Principles of Criminal Liability of Legal Persons.....	128
c) Attribution of Liability	129

d) Penalties.....	132
2.3.4. Overview of PIF Offences.....	133
2.3.5. Brief Note on “Inextricably Linked Offences” in Czech Law	134
2.3.6. Investigating PIF Crimes: Practical Case Studies	135
a) Examples of Expenditure and Revenue Frauds.....	135
i. Expenditure Frauds	136
ii. Revenue Frauds and Carousel Frauds.....	138
b) Judicial Decisions.....	140

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

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

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

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

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

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

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

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

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

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

2.1. Introductory Remarks

- 1 Empirical data from the **EPPO Annual Reports** provide valuable insights into the exercise of jurisdiction under Art 26 and 27 EPPO Regulation by Czech EDPs. Regional Offices initiated criminal proceedings in 17 cases and evoked 22 criminal cases in 2021, conducting investigations in total into 39 cases.⁵¹ This figure increased in 2022, as evidenced in the **EPPO Annual Report 2022**. The number of criminal proceedings initiated by the EDP more than doubled, with 36 investigations opened. All reported cases originated from national or supranational authorities.⁵²
- 2 The year 2022 also marked the **issuance of the first judgment**, which later entered into force.⁵³ The following year, 2023, saw a modest increase in the number of opened investigations to 43 and the issuance of five additional final court judgments. The importance of **simplified proceedings** has become evident with nine cases resolved through this mechanism.⁵⁴ This is likely due to the growing popularity of plea agreements in white-collar crime cases over the last five years in the Czech Republic.
- 3 As the newly published 2024 EPPO Report indicates, the activity of the EPPO continues to intensify. Not only did the number of opened investigations rise to 71, but there was also an increase in the number of final court judgments. Moreover, the estimated financial damage in these investigations rose sixfold – from EUR 92.6 million to EUR 596 million within a single year.⁵⁵
- 4 The following chapter examines how Czech EDPs can independently initiate investigations without reliance on Art 27 EPPO Regulation. In the Czech context, this necessitates not only an understanding of national law and jurisprudence but also an awareness of the **specific procedural distinctions** within the pre-trial proceedings framework. As shall be seen further on, this spans beyond the linguistic intricacies hinted at in the In-

⁵¹ EPPO 2022a, p. 1 (24).

⁵² EPPO 2023, p. 1 (24).

⁵³ Ibid.

⁵⁴ EPPO 2024, p. 24.

⁵⁵ EPPO 2025, pp. 24–25.

roduction. Accordingly, following a referential table outlining the relevant legal provisions, this chapter will first examine the **procedural aspects** essential to the proper application of Art 26 EPPO Regulation.

Nonetheless, a proper understanding of Art 26 EPPO Regulation in the Czech environment requires not only familiarity with procedural aspects but also a firm grasp of the substantive legal elements that must be taken into account. Beyond comprehension of the **general part of substantive criminal law**, which is a necessary prerequisite, it is essential to identify correctly specific PIF offences and to **determine which national offences fall within the scope of the Regulation**.

Table 10: Overview of Czech Provisions on Art 26 EPPO Regulation

Overview	
Relevant national law	Pre-trial proceedings: ss. 158–179i CCP; General conditions of criminal liability: ss. 12–35 Criminal Code (hereinafter referred to as “CC”); Interpretative provisions of the general part: ss. 110–139 CC (e.g. s. 138 on the minimum value threshold for certain offences); For PIF-offences, see next row below. <i>Further references:</i> Criminal liability of legal persons: Act on Criminal Liability of Legal Persons and Proceedings Against Them;⁵⁶ see especially s. 7 for offences under the CC for which a legal person cannot be prosecuted, and s. 8 for conditions of criminal liability (including the compliance defence); see below Chapter 2.3.3. International judicial cooperation: Act on International Judicial Cooperation in Criminal Matters⁵⁷ Duties of public prosecutors in national proceedings: Act on the Public Prosecutor’s Office⁵⁸
An offence within the competence of the EPPO	The Czech notification to the EPPO enumerates the relevant national offences that fall within the jurisdiction of the EPPO as PIF offences. These are listed in this table as well. For the full text of the offences referenced in Art 26 EPPO Regulation under the phrase “an offence within...”, see Part B.III, Annex II: PIF Offences.⁵⁹

⁵⁶ Zákon č. 418/2011 Sb., o trestní odpovědnosti právnických osob a řízení proti nim.

⁵⁷ Zákon č. 104/2013 Sb., o mezinárodní justiční spolupráci ve věcech trestních.

⁵⁸ Zákon č. 283/1993 Sb., o státním zastupitelství.

⁵⁹ It should be noted that despite the existence of this notification, there are at times not only academic but also practical discussions when different offences appear on the list. So long as these concern inextricably linked offences, this does not pose a challenge.

	Section 206 CC – embezzlement; Section 209 CC – fraud; Section 212 CC – subsidy fraud; Section 216 CC – money laundering; Section 217 CC – negligent money laundering; Section 220 CC – breach of duty of trust; Section 221 CC – negligent breach of duty of trust; Section 240 CC – evasion of taxes, fees and similar mandatory dues;⁶⁰ Section 241 CC – non-payment of taxes, social security contributions and similar mandatory dues; Section 248 (paragraph 2 alinea 2) CC – breach of competition law; Section 256 CC – arranging an advantage in public procurement, public tenders and government auctions; Section 257 CC – scheming to defraud in public procurement and tenders; Section 260 CC – damaging the financial interests of the EU Section 329 CC – abuse of official power; Section 330 CC – negligent obstruction of official business; Section 331 CC – accepting a bribe; Section 332 CC – bribery; Section 333 CC – trading in influence; Section 348 CC – forging and altering a public document; Section 361 CC – participation in an organised crime group; It should be noted that, pursuant to the wording of Art 22(3) EPPO Regulation, the EPPO also holds competence over any other criminal offence that is inextricably linked to criminal conduct falling within the scope of Art 22(1). However, the exercise of this extended competence is subject to the conditions set out in Art 25(3). Therefore, for other potential offences outside the EPPO’s primary scope, please refer to the CC for further guidance.⁶¹

Source: The authors. Information was also obtained from the Notification of the Czech Republic to the EPPO pursuant to Art 117 EPPO Regulation.⁶²

⁶⁰ See Unger et al. 2021, p. 262 for an analysis of all EU member states and their respective provisions, and p. 300 for a scenario and a comparison of normalised tax avoidance flows.

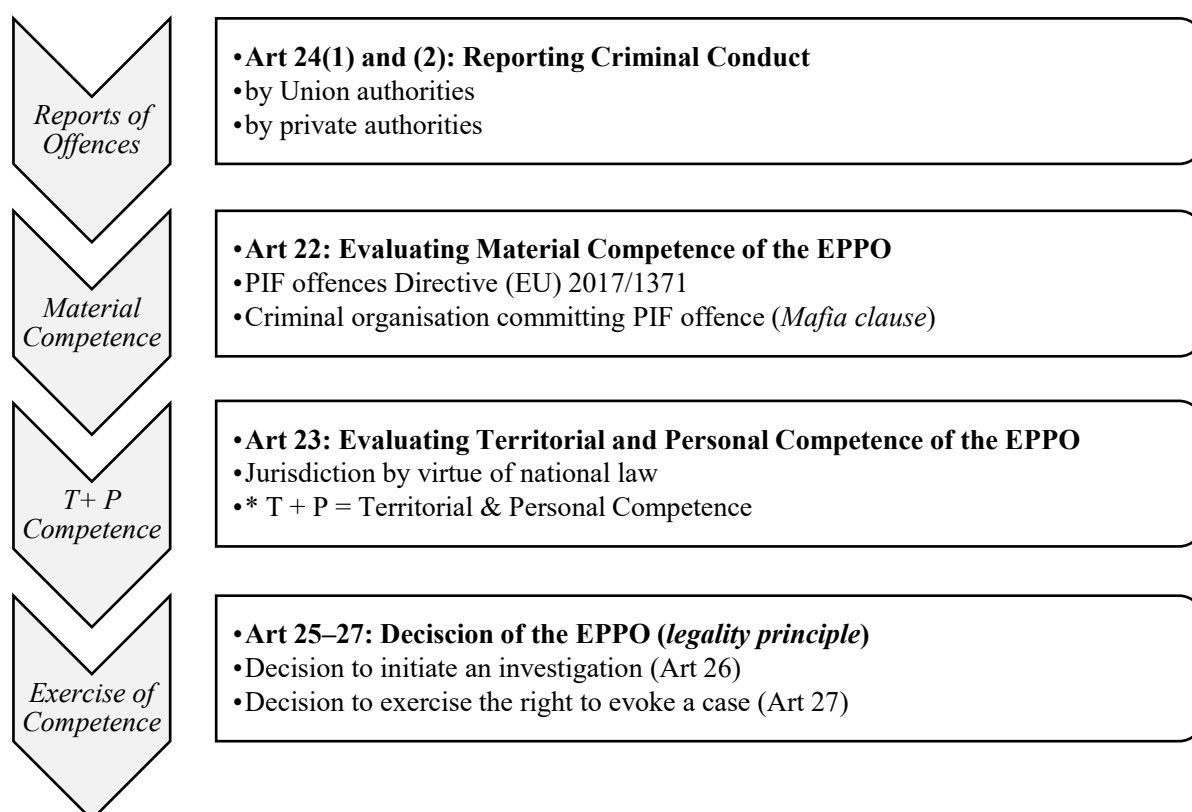
⁶¹ General principles for its interpretation are set out in Art 3.2(d) of Adopting Operational Guidelines on Investigation, Evocation Policy, and Referral of Cases, 2021.029/2022.026 (amended), Available at: https://www.eppo.europa.eu/sites/default/files/2022-08/2021.029-2022.026_Amended_Operational_guidelines_on_investigation_evocation_policy_referral_of_cases.pdf. Accessed 31 December 2024.

⁶² EPPO 2022c.

2.2. Procedural Matters

While the Regulation establishes the EPPO’s authority to initiate investigations *ex officio*, the **procedural reality** within individual Member States may pose a challenge to arrive at a compliant and effective solution. In the Czech Republic, the term “**initiation of investigation**” has a distinct meaning when compared to most European jurisdictions. Therefore, the first part of this analysis will focus on how the concept of “investigation” functions within the Czech legal system and how it can be aligned with the overarching objectives of the EPPO. Thereafter, each of the steps outlined in Figure 1 will be examined in the context of Czech criminal procedural law.⁶³

Figure 2: Exercise of EPPO Competence



Source: The authors.

2.2.1. Initiation of Investigation (Paragraph 1)

The Czech procedural framework – arguably distinctive, aside from its Slovak counterpart – employs the **term investigation** [vyšetřování] in a manner that **differs from its usage in many other jurisdictions**. Problematically, the Czech translation of the Regulation also adopts the term “vyšetřování”, as already noted in the Introduction, raising the question of **whether it is intended to carry the same meaning** as in the CCP.

⁶³ For the statutes, which apply see above Part A, III. d).

- 9 Before the main hearing, Czech criminal cases undergo **pre-trial proceedings** (ss. 157–179i CCP), which are further subdivided into:
- a) **Proceedings Prior to Investigation** (ss. 158–159d CCP);
 - b) **Investigation** (ss. 160–179i CCP).
- 10 Were the Regulation to be applied in the Czech context with strict terminological fidelity, the EPPO could only commence participation at the stage of investigation as defined in Czech law. This, however, as shall be seen further, would be **illogical**. Pursuant to Art 26(1) of the Regulation, the EPPO is required to act when there are “reasonable grounds to believe that an offence within its competence is being or has been committed”, which occurs **considerably earlier** than the point at which Czech law marks the commencement of an investigation.
- 11 Under Czech national law, the initiation of the second phase of the pre-trial proceedings – the investigation – is governed by ss. 160 et seq. CCP and **commences only upon verification that a specific individual has likely committed the offence in question**. According to s. 160(1) CCP, if the facts ascertained and substantiated under proceedings prior to investigation provide sufficient grounds for this conclusion, the law enforcement agency must immediately initiate criminal investigation against that person as an accused, which **marks the beginning** of investigation under national law (see further sub b)).
- 12 Accordingly, the term investigation as understood in the context of the Regulation **must be interpreted as encompassing the entirety of the pre-trial proceedings**, including **both the proceedings prior to investigation and the investigation itself as defined under the CCP**. This is in accordance with contemporary practice of the EDPs. Both stages will be briefly explained below.
-  *Nota bene:* It would be more natural to the Czech speaker to translate these as “proceedings prior to prosecution/verification” and “prosecution” but as the Regulation opts for utilising the term “prosecution” only after the indictment has been filed, the authors opt for less common terminology of “proceedings prior to investigation” and “investigation” so as not to confuse readers acquainted with the Regulation.
- 13 To clearly differentiate between the documents which are issued at the beginning of each of these phases, we use **“record on the commencement of pre-trial proceedings”** [záznam o zahájení úkonů trestního řízení] to indicate the **initiation of the verification phase**, during which authorities attempt to identify the offender. Conversely, we use **“resolution on the initiation of a criminal investigation against the accused”** [usnesení o zahájení trestního stíhání] to mark the **beginning of the investigation phase**, where a likely offender has been identified and authorities assess the grounds for prosecution and whether an indictment should be filed.

While these translations may seem somewhat **lengthy** to a native Czech speaker, they are necessary due to **linguistic discrepancies** between Czech legal terminology and the EPPO Regulation. Although the domestic legal context would not inhibit the latter term being more concisely translated as “resolution on the initiation of prosecution”, the Regulation defines prosecution as the filing of an indictment, which differs from the Czech procedural understanding of the term. Where beneficial, we aim to use the bracketed original term so as to keep readers aware throughout the text. 14

a) Proceedings Prior to Investigation

The commencement of criminal proceedings **necessitates the existence of facts that reasonably suggest a crime has been committed, with the aim of clarifying and verifying these facts.** If such facts are present, proceedings prior to investigation are initiated – commonly referred to informally also as “verification” [*prověřování*] – as their purpose is to ascertain (verify) whether a criminal offence has been committed, whether it fulfills all elements of a criminal offence, and to identify the offender. 15

Under Czech law, criminal proceedings are initiated under the conditions set out in ss. **158–158a CCP.** Law enforcement agencies are obliged, based on their own knowledge, criminal complaints,⁶⁴ or reports from other persons and authorities, to determine whether a criminal offence has been committed. They must undertake all necessary steps and measures to uncover facts suggesting a criminal offence has been committed and to identify the offender. Additionally, they are also required to take appropriate measures to prevent criminal activity. 16

In the Czech Republic, initiation of criminal proceedings requires the **drafting of a record on the commencement of pre-trial proceedings** or the **performance of urgent or unrepeatable measures**, either by the EPPO itself or by a law enforcement agency acting on its instructions. The EPPO must, therefore, comply with the conditions stipulated by the CCP for initiating criminal proceedings. 17

If the proceedings prior to investigation conducted pursuant to s. 158 CCP reveal facts indicating that a criminal offence has been committed and sufficient evidence exists to implicate a **specific individual**, the law enforcement agency is **required to promptly decide to open investigation against that individual** as the accused, thereby initiating the “investigation” phase. Subsequent investigation may then be carried out by authorities specified under s. 161 CCP. 18

If the authorities ascertain during phase sub a) “**proceedings prior to investigation**” that a crime has been committed and that it falls within the scope of the EPPO, the law 19

⁶⁴ Please note the distinction between a complaint [*stížnost*] and a criminal complaint [*trestní oznámení*], as discussed under Part B.II, Art 26 EPPO Regulation, Chapter 2.2.7, letter c, i).

enforcement agency must notify the EDP in accordance with Arts 24 et seq. EPPO Regulation. If a record on the commencement of pre-trial proceedings has already been drawn up or if criminal proceedings have already been initiated by carrying out urgent or unrepeatable measures and **only thereafter the EPPO receives information giving rise to a suspicion of a criminal offence within its jurisdiction**, then only the exercise of its **power of evocation** can be **considered**. In this context, the EPPO will assume responsibility for the conduct of the criminal proceedings already underway, without the need to reopen them.

- 20 The law enforcement agency is required to complete proceedings prior to investigation within specific time limits: two months for certain lesser offences under district court jurisdiction (with a maximum sentence not exceeding five years), three months for other cases under district court jurisdiction, and six months for cases falling under regional court jurisdiction. If these deadlines cannot be met, the law enforcement agency must submit a written explanation to the public prosecutor, detailing the reasons for the delay, necessary outstanding actions, and the expected duration of the continued inquiry. The prosecutor may then amend the list of required actions or set a new deadline. If the inquiry is not concluded within the extended period, the law enforcement agency must submit the file to the prosecutor with a reasoned request for further extension (see further in detail s. 159 CC).

b) Investigation

- 21 The initiation of criminal investigation in the Czech Republic is governed by s. 160 CCP. This provision outlines the legal framework for proceeding against an individual when sufficient evidence of their involvement in a criminal offence exists. From this moment onward, the individual against whom proceedings are conducted is no longer referred to as a suspect, but rather as an **accused** (see below Chapter 2.2.6).
- 22 The **significance of this procedural step** lies in the **expanded range of actions** that become available once it is taken. For instance, it enables measures such as **remanding the accused in custody** – a possibility that does not extend to a **suspect** (see Part B.II, Art 33 EPPO Regulation). Additionally, it allows for actions like ordering a psychiatric examination under s. 116(1) CCP. Moreover, this moment serves as the defining point of the **subject matter** of criminal proceedings, thereby delineating the scope of the evidence to be gathered in relation to the specific act for which investigation against the accused has been initiated.
- 23 In cases handled by an EDP, the **decision to initiate criminal investigation** [*usnesení o zahájení trestního stíhání*] **against the accused does not require prior approval from the Permanent Chamber**, as its powers are explicitly listed in Art 10(3) and (4) EPPO Regulation. Although Art 10(5) EPPO Regulation allows the Permanent Chamber to issue instructions to an EDP via the supervising European Prosecutor, if necessary for

the effective conduct of proceedings or in the interest of justice, this does not explicitly extend to authorising the initiation of investigation against the accused.

Under Czech procedural law, **an EDP can – as any public prosecutor – independently issue a decision to initiate criminal investigation against the accused in accordance with s. 174(2)(c) CCP**. However, in practice, such decisions are more commonly issued by the law enforcement agency, even when acting on behalf of the EPPO. If an EDP instructs the initiation of investigation against the accused, any **complaint** against this decision falls under the supervision of the European Prosecutor, in accordance with s. 146(2)(a) CCP (see below Chapter 2.2.7, letter i)).⁶⁵ 24

If, in exceptional cases, **the European Prosecutor assumes the investigation and the role of an EDP** under Art 28(4) EPPO Regulation, issuing the resolution on the commencement of investigation, the **Permanent Chamber** is the competent body for reviewing complaints against such a decision. 25

Section 160⁶⁶

(1) If the facts ascertained and substantiated under the procedure outlined in s. 158 CCP substantiate that a criminal offence has been committed and there is sufficient evidence to conclude that it was committed by a certain person, the law enforcement agency must immediately initiate criminal investigation against this person as an accused. This step 26

⁶⁵ Please note the distinction between a complaint [*stížnost*] and a criminal complaint [*trestní oznámení*], as discussed under Part B.II, Art 26 EPPO Regulation, Chapter 2.2.7, letter c, i).

⁶⁶ § 160

(1) Nasvědčují-li prověřováním podle § 158 zjištěné a odůvodněné skutečnosti tomu, že byl spáchán trestný čin, a je-li dostatečně odůvodněn závěr, že jej spáchala určitá osoba, rozhodne policejní orgán neprodleně o zahájení trestního stíhání této osoby jako obviněného, pokud není důvod k postupu podle § 159a odst. 2 a 3, § 159b odst. 1, 3 a 4 nebo § 159c odst. 1. Výrok usnesení o zahájení trestního stíhání musí obsahovat popis skutku, ze kterého je tato osoba obviněna, aby nemohl být zaměněn s jiným, zákonné označení trestného činu, který je v tomto skutku spatřován; obviněný musí být v usnesení o zahájení trestního stíhání označen stejnými údaji, jaké musí být uvedeny o osobě obžalovaného v rozsudku (§ 120 odst. 2). V odůvodnění usnesení je třeba přesně označit skutečnosti, které odůvodňují závěr o důvodnosti trestního stíhání.

(2) Opis usnesení o zahájení trestního stíhání je třeba doručit obviněnému nejpozději na počátku prvního výslechu a do 48 hodin státnímu zástupci a obhájci; u obhájce počíná lhůta k doručení běžet od jeho zvolení nebo ustanovení. Opis usnesení o zahájení trestního stíhání musí být doručen též poškozenému, pokud jsou jeho pobyt nebo sídlo známy a jestliže o to výslovně požádá. [...]

(3) Policejní orgán provede potřebné neodkladné nebo neopakovatelné úkony a zahájí trestní stíhání, pokud nelze dosáhnout, aby tyto úkony provedl příslušný orgán, a nejpozději do tří dnů od jejich provedení předá věc tomuto orgánu, který pokračuje v řízení.

(4) Neodkladným úkonem je takový úkon, který vzhledem k nebezpečí jeho zmaření, zničení nebo ztráty důkazu nesnese z hlediska účelu trestního řízení odkladu na dobu, než bude zahájeno trestní stíhání. Neopakovatelným úkonem je takový úkon, který nebude možno před soudem provést. V protokolu o provedení neodkladného nebo neopakovatelného úkonu je třeba vždy uvést, na základě jakých skutečností byl úkon za neodkladný nebo neopakovatelný považován.

(5) Vyjde-li během vyšetřování najevo, že se obviněný dopustil dalšího skutku, který není uveden v usnesení o zahájení trestního stíhání, postupuje se ohledně tohoto skutku způsobem uvedeným v odstavcích 1 a 2.

(6) Vyjde-li během vyšetřování najevo, že skutek, pro který bylo zahájeno trestní stíhání, je jiným trestným činem, než jak byl v usnesení o zahájení trestního stíhání právně posouzen, upozorní na to policejní orgán obviněného a učiní o tom záznam do protokolu.

(7) Proti usnesení o zahájení trestního stíhání může obviněný podat stížnost.

is only avoided if certain conditions under s. 159a(2) or (3), s. 159b(1), (3) or (4) or s. 159c(1) CCP apply. The resolution on the initiation of a criminal investigation against the accused must include a description of the act of which this person is accused, ensuring it cannot be mistaken for another act, and the legal designation of the offence associated with this act. The resolution must also provide identifying information about the accused, matching the requirements for a judgment under s. 120(2). The justification of the resolution must precisely set out the facts justifying the criminal investigation against the accused.

(2) A copy of the resolution on the initiation of a criminal investigation against the accused must be delivered to the accused no later than at the beginning of their first interrogation. The prosecutor and defence counsel within 48 hours. For defence counsel, this time limit begins upon their election or appointment. A copy must also be delivered to the injured party, if their address is known and if they have expressly requested it. [...]

(3) The law enforcement agency must carry out necessary urgent or unrepeatable actions and initiate criminal investigation if it is not possible for the competent authority to execute these actions. Within three days of their execution, the matter must be handed over to the competent authority, which will continue the proceedings.

(4) An urgent act is defined as one which, due to the risk of being thwarted, destroyed, or the evidence being lost, cannot be postponed in view of the purpose of the criminal proceedings. An unrepeatable act is one that cannot be performed later before a court. The protocol of any urgent or unrepeatable act must specify the facts that led to its classification as such.

(5) If, during the investigation, it becomes clear that the accused has committed another criminal offence not specified in the resolution on the initiation of a criminal investigation against the accused, the agency must address this act in accordance with the procedure specified in paragraphs 1 and 2.

(6) If, during the investigation, it becomes clear that the act for which criminal investigation was initiated constitutes a different offence than the one described in the resolution on the initiation of a criminal investigation against the accused, the law enforcement agency must make a note of this discrepancy and record it in the protocol.

Section 164 Investigation Procedure⁶⁷

(1) During the investigation, the law enforcement agency acts on its own initiative to ensure that evidence is gathered as promptly as possible, to the extent necessary, to clarify all essential facts important for the case's assessment. This includes facts related to the offender and the consequences of the crime (s. 89(1) CCP). [...]

⁶⁷ § 164 Postup při vyšetřování

(1) Policejní orgán postupuje při vyšetřování z vlastní iniciativy tak, aby byly co nejrychleji v potřebném rozsahu vyhledány důkazy k objasnění všech základních skutečností důležitých pro posouzení případu, včetně osoby pachatele a následku trestného činu (§ 89 odst. 1).

(2)⁶⁸ Actions performed before the initiation of a criminal investigation do not need to be repeated by the law enforcement agency if they were carried out in compliance with the provisions of this Act.

(3)⁶⁹ The law enforcement agency is obliged to seek and, under specific conditions, collect evidence, irrespective of whether it supports or contradicts the accused's position. The accused cannot be compelled to testify or confess in any way. [...]

(4) If witness interrogations were conducted before the initiation of criminal investigation in accordance with s. 158(9) CCP and these interrogations can be repeated, the law enforcement agency must either repeat the act at the accused's suggestion, allowing the accused or their defence counsel to participate, or inform the accused of their right to request the personal examination of such a witness during proceedings before a court. [...]

2.2.2. Sources Indicating Offences Within EPPO Competence

Following the clarification of the term “investigation”, attention must now turn to the manner in which the EPPO **receives the information** upon which it decides to open a case within the Czech system. As the Czech European Prosecutor at the EPPO, Petr Klement, noted, to identify relevant sources that indicate a criminal offence within the competence of the EPPO, the EPPO must “establish smart information flows between the central office in Luxembourg, delegated prosecutors and national authorities and, at the same time, avoid causing delays in the information exchange. [...] In this regard, some of the existing EU mechanisms concerning *de facto* reporting of PIF crimes seem to be obsolete, as well as national law duties to report such information to a national prosecution office in advance or in parallel to the EPPO.”⁷⁰

The transfer of information to the relevant EDPs or to the chamber of the EPPO is primarily governed by Art 24 EPPO Regulation. The transfer of information capable of

27

28

⁶⁸ Přitom postupuje způsobem uvedeným v § 158 odst. 3 a 5; provádí i další úkony podle hlavy čtvrté s výjimkou těch, které je oprávněn provést pouze státní zástupce nebo soudce. Výsledky svědků provádí, jestliže se jedná o neodkladný nebo neopakovatelný úkon nebo jde-li o výslech osoby mladší osmnácti let, osoby, o jejíž schopnosti správně a úplně vnímat, zapamatovat si nebo reprodukovat jsou s ohledem na její psychický stav pochybnosti, anebo nasvědčují-li zjištěné skutečnosti tomu, že na svědka by mohl být pro jeho výpověď vyvíjen nátlak. Jinak poškozeného a další svědky vyslechně jen tehdy, jestliže hrozí z jiného důvodu, že bude ovlivněna jejich výpověď nebo schopnost zapamatovat si rozhodné skutečnosti nebo schopnost tyto skutečnosti reprodukovat, zejména je-li pro složitost věci odůvodněn předpoklad delšího trvání vyšetřování. Bez těchto podmínek je však možno, jestliže je toho třeba, vyslechnout znalce.

(2) Úkony, které byly provedeny před zahájením trestního stíhání, nemusí policejní orgán opakovat, byly-li provedeny způsobem odpovídajícím ustanovením tohoto zákona.

⁶⁹ (3) Policejní orgán vyhledává a za stanovených podmínek i provádí důkazy bez ohledu na to, zda svědčí ve prospěch či neprospěch obviněného. Obviněný nesmí být žádným způsobem k výpovědi nebo doznání donucován. Obhajoba obviněného a jím navrhané důkazy, pokud nejsou zcela bezvýznamné, musí být pečlivě přezkoumány. (4) Jestliže byly před zahájením trestního stíhání provedeny výsledky svědků podle § 158 odst. 9 a lze-li takový úkon opakovat, policejní orgán jej na návrh obviněného buď provede znovu a obviněnému nebo obhájci umožní, aby se takového úkonu účastnil, nebo jej poučí o právu domáhat se osobního výslechu takového svědka v řízení před soudem. [...]

⁷⁰ Klement 2021, pp. 51–52.

establishing an initial suspicion of a PIF offence is contingent upon the specific nature of the suspected offence, the reporting person and whether any criminal proceedings have already been initiated. The authority should proceed to report the suspicion not only in cases when being certain of the EPPO's jurisdiction but on any reasonable grounds.⁷¹

- 29 This mechanism adopts a dual approach. **Article 24(1)** mandates the provision of information to the EPPO **before Czech criminal proceedings have been opened** (formally, “investigation” by the wording of the Regulation), requiring compliance from EU institutions, bodies, offices, agencies, and competent national authorities. Article 24(2), on the other hand, **emphasises the right of evocation**, ensuring that the EPPO can exercise its competence only if it is duly notified of **an ongoing national investigation**.
- 30 Therefore, in the context of Art 26 EPPO Regulation, ascertaining facts relevant to the commencement of criminal proceedings **aligns with the mechanism established in Art 24(1)**.
- 31 The acquisition of information on potential crimes, whether from private individuals (both natural and legal persons) or state authorities, necessitates an interpretation of Art 24(1) against the backdrop of the Czech CCP. This process follows a dual structure, both aspects deriving from s. 158 CCP.

a) Private Persons

- 32 First, the CCP designates the **authorities responsible for receiving criminal complaints**. Public prosecutors and law enforcement agencies are obliged to accept criminal complaints indicating the commission of a criminal offence (cf. s. 158(2) CCP). As a **public prosecutor for these purposes** (see s. 12(6) CCP), the EPPO **is likewise entitled to receive such complaints**. It is therefore entirely possible for the EPPO to acquire knowledge of a crime directly through this national mechanism via the natural or legal person reporting the crime directly to the EDP.

33 Section 34b Act on the Public Prosecutor's Office

(1)⁷² On the date when a prosecutor, the European Chief Prosecutor, the European Public Prosecutor, or a European Delegated Prosecutor is appointed, the public prosecutor is

⁷¹ Novák 2023, p. 24.

⁷² § 34b: (1) Dnem, k němuž vznikla státnímu zástupci funkce evropského nejvyššího žalobce, evropského žalobce nebo evropského pověřeného žalobce, je státní zástupce dočasně přidělen k Úřadu evropského veřejného žalobce. V rozsahu, ve kterém není státní zástupce jmenovaný do funkce evropského pověřeného žalobce dočasně přidělen k Úřadu evropského veřejného žalobce, plní tento státní zástupce povinnosti státního zástupce podle tohoto zákona. Dočasné přidělení trvá po dobu výkonu funkce evropského nejvyššího žalobce, evropského žalobce nebo evropského pověřeného žalobce.

(2) Ministr spravedlnosti po projednání s nejvyšším státním zástupcem a se souhlasem státního zástupce jmenovaného do funkce evropského pověřeného žalobce stanoví určité státní zastupitelství jako místo výkonu jeho funkce.

seconded to the European Public Prosecutor's Office. To the extent that the public prosecutor appointed to the position of European Delegated Prosecutor is not temporarily assigned to the European Public Prosecutor's Office, this public prosecutor shall fulfil the duties of a public prosecutor under this Act. The secondment period corresponds to the duration of the individual's role as the European Chief Prosecutor, the European Public Prosecutor, or the European Delegated Prosecutor.

(2) The Minister of Justice, following consultation with the Supreme Prosecutor and with the consent of the public prosecutor appointed to the position of European Delegated Prosecutor, shall designate a specific public prosecutor's office as the locus for performance of their function.

Section 12⁷³ Criminal Procedure Code

(6) [...] The term "public prosecutor" shall also encompass the European Delegated Prosecutor, the European Prosecutor, and the European Chief Prosecutor, within the scope of their competence as established by Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office.

Criminal Code⁷⁴

Section 127a Public Prosecutor⁷⁵

For the purposes of this Act, the term "public prosecutor" also includes a European Delegated Prosecutor, a European Public Prosecutor and the European Chief Prosecutor within the scope of their respective powers as defined by directly applicable European Union law establishing the European Public Prosecutor's Office.

⁷³ § 12(6): [...] Státním zástupcem se rozumí i evropský pověřený žalobce, evropský žalobce a evropský nejvyšší žalobce v rozsahu jejich působnosti stanovené nařízením Rady (EU) 2017/1939, kterým se provádí posílená spolupráce za účelem zřízení Úřadu evropského veřejného žalobce.

⁷⁴ While this extension of the definition for substantive matters is not directly relevant to the procedural aspects under EPPO Regulation, it remains equally important when discussing criminal substantive law. Public prosecutors fall within the scope of public authorities, and by virtue of the extended definition in s. 127a CC, prosecutors working within the EPPO structure are considered public authorities as well. Therefore, they both enjoy

⁷⁵ § 127 Státní zástupce

Státním zástupcem se rozumí i evropský pověřený žalobce, evropský žalobce a evropský nejvyšší žalobce v rozsahu jejich působnosti stanovené přímo použitelným předpisem Evropské unie upravujícím zřízení Úřadu evropského veřejného žalobce.

34 The **national rules governing the receipt of criminal complaints** have been amended through the **EPPO Adoption Law** to facilitate the EPPO's activities within the Czech Republic.⁷⁶

35 **Section 158⁷⁷**

(1) The law enforcement agency is obliged, based on its own knowledge, criminal complaints, or initiatives from other persons and authorities, on the basis of which a conclusion can be made about the suspicion of the commission of a criminal offence, to carry out all necessary investigations and measures to reveal facts indicating that a criminal offence has been committed and aim at identifying the offender. It is also obliged to take the necessary measures to prevent criminal activity. The law enforcement agency informs the public prosecutor of facts indicating that a criminal offence has been committed, in which the European Public Prosecutor's Office could exercise its authority in accordance with Art 22 and Art 25(2) and (3) of Council Regulation (EU) 2017/1939. The authorised authorities of the Prison Service of the Czech Republic immediately inform the General Inspection of Security Forces as soon as they start such an investigation.

(2) A public prosecutor or a law enforcement agency is obliged to receive criminal complaints concerning facts indicating that a criminal offence has been committed. In doing so, they must inform the notifier of their liability for knowingly providing false information. Additionally, upon the notifier's request, they are required to inform them within one month of the measures taken in response to the criminal complaint. [...].

more extensive protection (when a crime is committed against a public official, it may feature an aggravating circumstance), or higher levels of scrutiny (heightened scrutiny in offences such as bribery, particularly under s. 331(3)(b) CC concerning the acceptance of bribes by public officials, technically also an aggravating circumstance).

⁷⁶ The EPPO adoption law can be found in the Czech Republic under “zákon, kterým se mění zákon č. 283/1993 Sb., o státním zastupitelství, ve znění pozdějších předpisů, zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád), ve znění pozdějších předpisů, zákon č. 40/2009 Sb., trestní zákoník, ve znění pozdějších předpisů, a některé další zákony.”

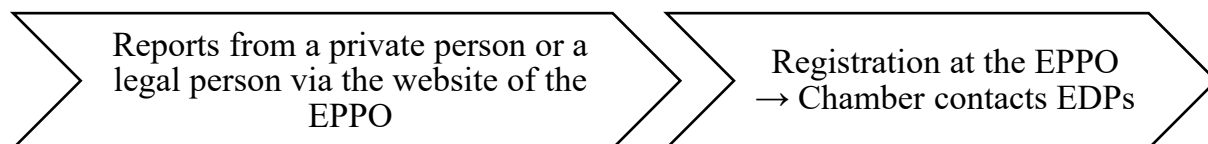
⁷⁷ **§ 158**

(1) Policejní orgán je povinen na základě vlastních poznatků, trestních oznámení i podnětů jiných osob a orgánů, na jejichž podkladě lze učinit závěr o podezření ze spáchání trestného činu, učinit všechna potřebná šetření a opatření k odhalení skutečností nasvědčujících tomu, že byl spáchán trestný čin, a směřující ke zjištění jeho pachatele; je povinen činit též nezbytná opatření k předcházení trestné činnosti. Policejní orgán informuje státního zástupce o skutečnostech nasvědčujících tomu, že byl spáchán trestný čin, u něhož by Úřad evropského veřejného žalobce mohl vykonat svou pravomoc v souladu s čl. 22 a čl. 25 odst. 2 a 3 nařízení Rady (EU) 2017/1939. Pověřené orgány Vězeňské služby České republiky neprodleně informují Generální inspekci bezpečnostních sborů, jakmile zahájí takové šetření.

(2) Oznámení o skutečnostech nasvědčujících tomu, že byl spáchán trestný čin, je povinen přijímat státní zástupce a policejní orgán. Přitom je povinen oznamovatele poučit o odpovědnosti za vědomě nepravdivé údaje, a pokud o to oznamovatel požádá, do jednoho měsíce od oznámení jej vyzoomět o učiněných opatřeních.

Other than that, private persons can also **file a criminal complaint via the website of the EPPO** and thus send a direct complaint, which shall then be registered at the EPPO and the Chamber then contacts the respective EDP. 36

Figure 3: Supranational Mechanisms for the EPPO's Acquisition of Information and Exercise of Jurisdiction 37



Source: The authors.

b) Law Enforcement Agencies and State Authorities

Secondly, the third sentence of s. 158(1) CCP stipulates that **law enforcement agencies must report to public prosecutor** where a crime may have been committed and falls within their jurisdiction. Given that s. 12(6) CCP explicitly defines a public prosecutor as including an EDP, European Prosecutor, and European Chief Prosecutor (for verbatim wording, see above sub a)), **s. 158(1) CCP** can be interpreted in two ways. 38

Either the **law enforcement agency reports first to a public prosecutor**, who then analyses the case and subsequently reports to the EPPO, as outlined in s. 34e StZast, or the **law enforcement agency reports directly to the EPPO**.⁷⁸ For the obligation of national public prosecutors to report to the EPPO, see Art 1(10) of the General Instruction of the Supreme Public Prosecutor No 9/2019, on the Procedure of Public Prosecutors in Criminal Proceedings [pokyn obecné povahy Nejvyššího státního zástupce č. 9/2019, o postupu státních zástupců v trestním řízení]. 39

This obligation applies irrespective of whether the information was provided to the law enforcement agency through a criminal complaint by a private person, report from a state authority, or the agency's own operational activities. 40

Beyond these channels, national **authorities are further directly obliged to inform the EPPO under Art 24(1) EPPO Regulation**. 41

Figure 4: National Mechanisms for the EPPO's Indirect Acquisition of Information and Exercise of Jurisdiction 42



Source: The authors.

⁷⁸ See further Dobeš 2023, p. 583.

- 43 The EPPO Annual Report 2021 indicated that national authorities contacted the EPPO with potential cases on 79 occasions, a surprisingly high number.⁷⁹ However, only 47 reports were received in 2022,⁸⁰ with the number slightly increasing in 2023 to 55 reports from national authorities.⁸¹
- 44 In addition to these two sources of information from state authorities, the EPPO can also receive information from **EU bodies**, which are obliged to report either to OLAF or to the EPPO. This duty is substantiated in Working Agreements. The final decision of EU bodies on whether to report to the EPPO depends on their assessment of the seriousness of the suspected conduct – whether it constitutes mere irregularities or provides clear foundations for potential criminal offences.
- 45 Similarly, **OLAF reports conduct that falls in the EPPO’s competence** by virtue of Art 12c, 12e OLAF Regulation.
- 46 It should also be briefly noted that the **reverse situation may occur** – not a criminal offence within the EPPO’s competence being reported to national authorities and subsequently forwarded to the EPPO, but rather the EPPO itself becoming aware of a criminal offence falling within the jurisdiction of national authorities. The competent Czech authority designated to receive such reports under **Art 24(8) is the Supreme Prosecutor’s Office**.⁸²

2.2.3. Determination of Competence

- 47 The primary task of the EDPs in the Czech regional office is to determine whether the EPPO has competence and jurisdiction or whether it can obtain competence and exercise jurisdiction. These questions are formal in nature but of fundamental importance, addressed through Union secondary legislation and special delegated guidelines required by secondary legislation – the **Internal Rules on Procedure** (IRP, see Art 22, 23 EPPO Regulation).
- 48 Relevant **Internal Rules of Procedure** (Art 40 IRP) are included in Part B.III, Annex IV: Internal Rules of Procedure (EPPO). For the process following registration information and their verification, see esp. Arts 38 IRP et seq.
- 49 Either an examination under Art 24(6) EPPO Regulation must demonstrate that the EPPO is competent, or the EDP undertakes an assessment and determination under Art 26(1) EPPO Regulation. In the latter case, the EDP may initiate an investigation independently, without first notifying the Permanent Chamber, but must subsequently inform it. While adhering to the requirements of Art 25(2) and (3), the EDP retains the

⁷⁹ EPPO 2022a, p. 1 (24).

⁸⁰ EPPO 2023, p. 1 (24).

⁸¹ EPPO 2024, p. 24.

⁸² EPPO 2022c, p. 1.

authority to initiate an investigation “without prejudice to the rules set out in Arts 25(2) and (3)”.

Before competence is exercised, this requires verification of the Regulation’s provisions, jurisdiction (e.g. territorial scope), thresholds and orders issued by the Luxembourg Chamber. 50

Material competence of the EPPO (Art 22) 51

- EPPO-relevant offence was committed (on discussion of criminal substantive aspects pertaining to Art 26, see below Chapter 2.3);
- National databases and information are maintained under Art 40(3) IRP.

Territorial and personal competences of the EPPO (Art 23) 52

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

Nota bene: The general rules on competences under both the CCP and the EPPO Regulation are further modified by the provisions of the IRP, specifically concerning the reallocation of cases to EDPs within the same Member State (Art 49 IRP) or to another Member State (Art 50 IRP), as well as the merging and splitting of cases (Art 51 IRP).

2.2.4. Conflicts of Competence

General rules on the resolution of **competence conflicts** are, *inter alia*, in Art 26(4) EPPO Regulation and further distinguished in the EPPO Guidelines.⁸³ In the Czech Republic, the designated authority for resolving such conflicts is the **Supreme Prosecutor’s Office** [*Nejvyšší státní zastupitelství*, hereinafter referred to as “NSZ”], in accordance with Art 25(6) and Art 117 EPPO Regulation.⁸⁴ This is mirrored in **s. 34g of the Act on the Public Prosecutor’s Office** [zákon č. 283/1993 Sb., o státním zastupitelství]. 53

Nonetheless, this solution on the national level is not without challenges. A particular challenge arises when the **NSZ itself is a party to the competence conflict**. This can occur, for instance, when deciding on a complaint against a resolution initiating a criminal investigation, issued by a law enforcement agency with the consent or at the behest of a prosecutor from a High Public Prosecutor’s Office [*Vrchní státní zastupitelství*]. In 54

⁸³ The existing guidelines can be viewed on the EPPO homepage, online: <https://www.eppo.europa.eu/en/documents/documents?keywords=guidelines&category=All>. Accessed 1 January 2025.

⁸⁴ EPPO 2022c, p. 1.

such cases, the **same department within the NSZ** – specifically, the **Department for Serious Economic and Financial Crime** [odbor závažné hospodářské a finanční kriminality] – may end up adjudicating the dispute.⁸⁵

- 55 Another issue is the **interpretation of European law**, which falls within the exclusive jurisdiction of the CJEU. At the same time, only a court can submit a **preliminary ruling request** under Art 267 TFEU, and the NSZ, being a prosecutorial authority, does not qualify as such. However, **Recital 62 EPPO Regulation** explicitly states that decisions on competence should be made by **judicial authorities**. This raises the question of whether the NSZ is **obliged to refer** matters of EU law to the CJEU, as no other national body appears to have the standing to do so.⁸⁶
- 56 The NSZ's decision in such cases is issued by resolution, communicated to the national public prosecutor's office concerned and the EPPO, with no legal remedy available against it.⁸⁷ This procedural finality further underscores the unique and potentially problematic role of the NSZ in competence disputes within the EPPO framework.

2.2.5. Actions Following the Decision to Open a Case

- 57 Beyond satisfying the admissibility requirements under national criminal procedure law, the EPPO must also input detailed information into the CMS. The CMS serves as a supranational tool and database for the EPPO, which is not accessible to the general public or defence counsel. Required entries include the estimated amount and nature of the damage, the Member State(s) where the criminal activity is primarily concentrated, and other relevant data.
- 58 When an EDP decides to initiate an investigation, this decision **must be recorded in the Case Management System** pursuant to Art 45(1) EPPO Regulation and Art 38 IRP.⁸⁸ Additionally, the obligations to provide information, as stipulated in Art 24(3) to (8) EPPO Regulation, must be fulfilled. Preliminary information on which data are supposed to be recorded in the CMS can be found in Art 38(2) and (3) IRP.⁸⁹

⁸⁵ Dobeš 2023, p. 588.

⁸⁶ Ibid.

⁸⁷ Art 3a of the General Instruction of the Supreme Public Prosecutor, on the Procedure of Public Prosecutors in Criminal Proceedings [pokyn obecné povahy Nejvyššího státního zástupce č. 9/2019]. Available at: https://verejnazaloba.cz/wp-content/uploads/2020/01/POP_9-2019-1.pdf. Accessed 31 March 2025.

⁸⁸ See Internal Rules of Procedure of the European Public Prosecutor's Office. Available at: <https://www.eppo.europa.eu/sites/default/files/2020-12/2020.003%20IRP%20-%20final.pdf>. Accessed 31 March 2025.

⁸⁹ **Art 38 IRP**

2. The registration shall include the date, time and place of receipt of the information, and the person opening the registration file. It shall further include the following details:

a) the source of the information, including the identity and contact details of the organisation or person who has provided it, unless applicable rules regarding the protection of informers and whistle-blowers are applicable and provide otherwise;

The IRP provides detailed guidelines for this process, particularly in Art 41, which pertains to cases initiated under Art 26 EPPO Regulation. 59

2.2.6. The Term “the Accused” in Czech Criminal Proceedings

When examining existing Czech terminology related to the individual commonly referred to in various jurisdictions as “the suspect” or “the accused,” it is essential to differentiate between the distinct terms used in Czech criminal proceedings. The general term “a person against whom the proceedings are being conducted” [*osoba, proti níž se řízení vede*] serves as an overarching designation that encompasses all stages of the proceedings. However, to ensure precision in understanding the CCP, four specific terms must be distinguished for the purposes of this compendium. 60

a) A Suspect [*podezřelý*]

The term **suspect** carries a **dual meaning** in pre-trial proceedings. It refers not only to a person under suspicion from a forensic or criminalistic perspective but also has a distinct procedural definition. 61

Firstly, **a suspect is a person held in custody without charge** under ss. 76 or 76a CCP until the second phase of pre-trial proceedings commences, i.e. until criminal investigation against the accused is formally initiated. For details on custody without charge, see Part B.II, Art 33 EPPO Regulation, Chapter 4.2.2. By definition, this status is strictly **limited to the period of custody without charge**, which is a maximum of **48 hours**, unless a proposal for the accused’s remand in custody has been filed. 62

Secondly, **a suspect is also a person against whom abbreviated pre-trial proceedings** [*zkrácené přípravné řízení*] **have been initiated** under s. 179b CCP until the prosecutor 63

b) the format of the information, including reference to any document or other item, which cannot be stored in original in the Case Management System;

c) whether the file is opened with a view to initiating or evoking an investigation.

3. The registration should also contain, to the extent available:

a) the possible legal qualification of the reported criminal conduct, including if it was committed by an organised group;

b) a short description of the reported criminal conduct, including the date when it was committed;

c) the amount and nature of the estimated damage;

d) the Member State(s) where the focus of the criminal activity is, respectively where the bulk of the offences, if several, was committed;

e) other Member States that may be involved;

f) the names of the potential suspects and any other involved persons in line with Article 24(4) of the Regulation, their date and place of birth, identification numbers, habitual residence and/or nationality, their occupation, suspected membership of a criminal organisation;

g) whether privileges or immunities may apply;

h) the potential victims (other than the European Union);

i) the place where the main financial damage has occurred;

j) inextricably linked offences;

k) any other additional information, if deemed appropriate by the inserter.

submits an application for a penalty, which is the equivalent of an indictment in standard proceedings.

b) An Accused [*obviněný*]

- 64 An **accused** is a person against whom **criminal investigation has been initiated**, meaning that pre-trial proceedings have established the commission of a criminal offence and identified a specific offender. This stage follows that of the suspect in standard proceedings. In **abbreviated proceedings**, however, this term is **not used at all**.
- 65 Upon becoming an accused, the individual is **granted a broader range of rights** (see below Chapter 2.2.7).
- 66 A distinct definition is featured in s. 12(8) CCP, according to which “unless the nature of the matter implies otherwise, the term ‘the accused’ shall also include the defendant [*obžalovaný*] and the convicted person [*odsouzený*]”.⁹⁰ This, however, serves as a **legislative-technical abbreviation** for the purposes of the CCP, rather than indicating that the **defendant** and the **convicted person** hold the same rights and legal standing as the **accused**.

c) A Defendant [*obžalovaný*]

- 67 A **defendant** is an accused person **after the main hearing has been scheduled** [*nařízeno*] (s. 12(9) CCP).⁹¹ The mere filing of an indictment is insufficient for this status to take effect, as the court may, for example, return the case to pre-trial proceedings. Thus, the term “defendant” applies only once the main hearing has been scheduled.
- 68 In **abbreviated proceedings**, however, a suspect **becomes a defendant immediately** upon the prosecutor’s submission of an **application for a penalty**, thereby bypassing the status of the accused altogether. This corresponds with the terminology utilised in the CCP.

d) A Convicted Person [*odsouzený*]

- 69 As per s. 12(10) CCP, a **convicted person** is someone against whom a **final and binding guilty verdict has been issued**.⁹²
- 70 It is important to note that in Czech criminal proceedings, a **plea agreement** [*dohoda o vině a trestu*] is confirmed by a **sentencing judgment**. Consequently, an individual who enters into a plea agreement with the prosecutor is also formally considered a **convicted person**.

⁹⁰ It should be noted that the referencing of ss. 12(5) et seq. CCP has been revised as of 1 January 2025, resulting in a shift in the numbering of paragraphs by one. References to ss. 12(8) to (10) CCP herein follow the updated numbering and correspond to ss. 12(7) to (9) CCP as they stood until 31 December 2024.

⁹¹ Ibid.

⁹² Ibid.

2.2.7. Rights of the Person Against Whom Proceedings Are Conducted

A discussion on the procedural aspects of initiating criminal proceedings – or, in the language of the Regulation, the investigation – would be incomplete without addressing the rights of the accused in Czech criminal proceedings. While these rights are generally covered under Arts 41 et seq. EPPO Regulation, this compendium focuses primarily on pre-trial proceedings and does not provide a dedicated analysis of Art 41. Therefore, the rights of individuals subject to criminal proceedings will be discussed here succinctly.

The **transnational nature of the EPPO** has raised concerns among scholars regarding its impact on the **principle of equality of arms**.⁹³ A key issue is the **fragmented legal protection** across Member States, where procedural guarantees vary, and no centralised defence structure counterbalances the EPPO’s prosecutorial authority. As a result, cross-border proceedings amplify disparities in defence rights. Although this has not yet been confirmed by experience in the Czech Republic, there may be risks of **prosecutorial forum shopping** in other jurisdictions.

To mitigate these imbalances, particularly those arising from language barriers and unfamiliarity with foreign legal frameworks governing evidence collection, the issue of a potential inequality of arms was also discussed in the **Czech academic discourse**.⁹⁴ One such proposal suggests that **cases involving the EPPO should automatically qualify for mandatory defence** [*nutná obhajoba*, see further Chapter 2.2.7, letter d)] to safeguard the accused’s rights.⁹⁵

Therefore, we will examine what an accused in the Czech system can expect when facing proceedings involving the EPPO. Following an overview of the essential constitutional guarantees – primarily enshrined in the Charter of Fundamental Rights and Freedoms – the analysis will turn to the rights of the accused as set out in the CCP.

After introducing the right to defence – typically the most emphasised procedural right – we will turn to the submission of complaints against procedural decisions and inappropriate conduct, as both are significantly modified in the context of investigations conducted by the EPPO. Finally, we will provide an overview of other relevant rights.

To conclude the chapter, we will examine the role of defence counsel, who acts on behalf of the accused, including an outline of their rights, duties, and the extent of their legal authority in safeguarding the accused’s interests.

⁹³ See for example Esser 2023, pp. 89–126; Ramos 2023, pp. 43–70.

⁹⁴ Růžicka 2023, pp. 73–74.

⁹⁵ Grivna 2019, pp. 59–65.

a) Constitutional Guarantees

- 77 The foundational provisions relating to the rights of the accused in this regard can be found in the **Charter of Fundamental Rights and Freedoms** [Listina základních práv a svobod, vyhlášena formou zvláštního usnesení Předsednictva ČNR č. 2/1993 Sb.]. Notably, Chapter 5 addresses fundamental judicial rights, including the **right to judicial and other legal protection**.
- 78 A significant provision in this context is **Art 37** of the Charter, which ensures the protection of suspects during an investigation against them.

Chapter Five – The Right to Judicial and Other Legal Protection

Article 36⁹⁶

- (1) Everyone may assert their rights before an independent and impartial court or, in specified cases, before another authority through the prescribed procedure.
- (2) Unless otherwise provided, any person who claims that they were deprived of their rights by a decision of a public administrative authority may request a court review of the legality of that decision. Judicial review of decisions affecting the fundamental rights and freedoms listed in this Charter may not be excluded from the jurisdiction of courts.
- (3) Everybody is entitled to compensation for damage caused by an unlawful decision of a court, other state bodies, or public administrative authorities, or as a result of incorrect administrative procedure.
- (4) The conditions and detailed provisions for this shall be set by law.

Article 37⁹⁷

- (1) Anyone has the right to refuse to give a statement if doing so would expose them or a person close to them to the risk of investigation against them.
- (2) Everyone has the right to legal assistance in proceedings before courts, state bodies, or public administration bodies from the commencement of the proceedings.
- (3) All participants are equal in the proceedings.

⁹⁶ Článek 36

- (1) Každý se může domáhat stanoveným postupem svého práva u nezávislého a nestranného soudu a ve stanovených případech u jiného orgánu.
- (2) Kdo tvrdí, že byl na svých právech zkrácen rozhodnutím orgánu veřejné správy, může se obrátit na soud, aby přezkoumal zákonnost takového rozhodnutí, nestanoví-li zákon jinak. Z pravomoci soudu však nesmí být vyloučeno přezkoumávání rozhodnutí týkajících se základních práv a svobod podle Listiny.
- (3) Každý má právo na náhradu škody způsobené mu nezákonným rozhodnutím soudu, jiného státního orgánu či orgánu veřejné správy nebo nesprávným úředním postupem.
- (4) Podmínky a podrobnosti upravuje zákon.

⁹⁷ Článek 37

- (1) Každý má právo odepřít výpověď, jestliže by jí způsobil nebezpečí trestního stíhání sobě nebo osobě blízké.
- (2) Každý má právo na právní pomoc v řízení před soudy, jinými státními orgány či orgány veřejné správy, a to od počátku řízení.
- (3) Všichni účastníci jsou si v řízení rovni.
- (4) Kdo prohlásí, že neovládá jazyk, jímž se vede jednání, má právo na tlumočníka.

(4) Whoever declares that they do not understand the language in which the hearing is conducted has the right to an interpreter.

Article 38⁹⁸

(1) No one may be removed from the jurisdiction of their lawful judge. The jurisdiction of courts and judges shall be determined by law.

(2) Everyone has the right to have their case heard in public, without undue delay and in their presence, as well as to express their opinion on all admitted evidence. The public may only be excluded in cases specified by law.

Article 39⁹⁹

Only a law may define which acts constitute a crime and the penalties or other detriments to rights or property that may be imposed for committing them.

Article 40¹⁰⁰

(1) Only a court may decide on guilt and impose penalties for criminal offences.

(2) A person against whom criminal proceedings have been initiated shall be presumed innocent until their guilt is established by a court's final judgment of conviction.

(3) The accused has the right to adequate time and facilities to prepare a defence and to defend themselves personally or with the assistance of counsel. If the accused does not select a counsel despite being required by law to do so, the court shall appoint one on their behalf. The law specifies the circumstances under which the accused is entitled to free legal representation.

(4) The accused has the right to remain silent and cannot be deprived of this right in any manner whatsoever.

⁹⁸ **Článek 38**

(1) Nikdo nesmí být odňat svému zákonnému soudci. Příslušnost soudu i soudce stanoví zákon.

(2) Každý má právo, aby jeho věc byla projednána veřejně, bez zbytečných průtahů a v jeho přítomnosti a aby se mohl vyjádřit ke všem prováděným důkazům. Veřejnost může být vyloučena jen v případech stanovených zákonem.

⁹⁹ **Článek 39**

Jen zákon stanoví, které jednání je trestným činem a jaký trest, jakož i jaké jiné újmy na právech nebo majetku, lze za jeho spáchání uložit.

¹⁰⁰ **Článek 40**

(1) Jen soud rozhoduje o vině a trestu za trestné činy.

(2) Každý, proti němuž je vedeno trestní řízení, je považován za nevinného, pokud pravomocným odsuzujícím rozsudkem soudu nebyla jeho vina vyslovena.

(3) Obviněný má právo, aby mu byl poskytnut čas a možnost k přípravě obhajoby a aby se mohl hájit sám nebo prostřednictvím obhájce. Jestliže si obhájce nezvolí, ačkoliv ho podle zákona mít musí, bude mu ustanoven soudem. Zákon stanoví, v kterých případech má obviněný právo na bezplatnou pomoc obhájce.

(4) Obviněný má právo odepřít výpověď; tohoto práva nesmí být žádným způsobem zbaven.

(5) Nikdo nemůže být trestně stíhán za čin, pro který již byl pravomocně odsouzen nebo zproštěn obžaloby. Tato zásada nevylučuje uplatnění mimořádných opravných prostředků v souladu se zákonem.

(6) Trestnost činu se posuzuje a trest se ukládá podle zákona účinného v době, kdy byl čin spáchán. Pozdějšího zákona se použije, jestliže je to pro pachatele příznivější.

(5) No one may be criminally prosecuted for an act for which they have already been finally convicted or acquitted. This rule does not preclude the application of extraordinary remedies in accordance with the law.

(6) Whether an act is punishable shall be determined and penalties imposed, in accordance with the law in force at the time of the commission of the act. A subsequent law shall be applied if it is more favourable to the offender.

b) The Code of Criminal Procedure

- 79 The rights of the **accused** [*obviněný*] are extensive, varying in scope depending on the specific stage of the criminal proceedings. As previously mentioned, these rights are **significantly narrower** for a **suspect** [*podezřelý*] compared to an accused person.

c) Right to Defence

- 80 The first right, applicable to both the accused and a detained suspect – whether in the context of abbreviated proceedings or the decisions regarding investigation against the accused and/or remand in custody – is the **right to defence**.
- 81 The **right to defence** is the most significant procedural right and consists of three key elements:
- 82 - **The right to self-defence:** the person against whom proceedings are conducted has the right to defend themselves (**material defence**). Under Czech law, this also reflects the principle that the accused is not obliged to provide truthful information, pursuant to the rule *nemo tenetur se ipsum accusare* (see further Part B.I, Art 29 EPPO Regulation, Chapter 5.3.1). Nonetheless, it should be noted that the Czech Republic belongs to one of the states which criminalise defamation [*pomluva*] in its s. 184 CC, criminalising both slander and libel.¹⁰¹
- 83 - **The right to legal representation:** the right to be represented by defence counsel [*obhájce*], which, given its critical importance also in the context of complex white-collar crime cases, is examined in detail below (**formal defence**).
- 84 - **The right to an impartial and balanced approach by the authorities:** authorities involved in criminal proceedings must investigate facts both in favour of and against the person against whom proceedings are conducted, exercising equal diligence (s. 2(5) CCP).

¹⁰¹ **Section 184 Defamation**

(1) Whoever communicates false information about another person that is capable of significantly endangering their reputation among fellow citizens, in particular by damaging their employment, disrupting their family relationships, or causing them other serious harm, shall be punished by imprisonment of up to one year.

(2) The offender shall be punished by imprisonment of up to two years or a prohibition of activities if the act described in paragraph 1 is committed through print, film, radio, television, a publicly accessible computer network, or another similarly effective means.

A suspect who has been **detained** has the **right to choose defence counsel**, to **consult with them without the presence of a third party**, and to **seek their legal advice** from the moment of detention or arrest (s. 76a CCP, see Part B.II, Art 33 EPPO Regulation, Chapter 4.2). Furthermore, the suspect is entitled to **communicate at their own expense** via correspondence or telephone with a person of their choosing, provided it is technically feasible and does not jeopardise the purpose of the criminal proceedings or interfere with the interests of the victim. Such communication is subject to monitoring (see further s. 76b CCP). 85

A **detained foreign national** has the right to have their consular office notified of their detention and to communicate with that office. If the detained foreign national lacks sufficient financial resources, communication with the consular office must be facilitated **free of charge**. The authorities are required to **inform** the detained person of these rights and to ensure that they are fully able to exercise them. However, a suspect does not have the right to access the case file. 86

In **abbreviated proceedings** [*zkrácené přípravné řízení*], the rights of the suspect are broader, **aligning** with those of an **accused person** (s. 179b(2) CCP). 87

i. Right to Submit a Complaint Against a Decision

As mentioned above, one of the fundamental protections for the accused is the right to lodge a **complaint** [*stížnost*] **against procedural decisions** made during criminal proceedings. This right serves as a crucial safeguard, ensuring that prosecutorial and investigative actions are subject to judicial or higher prosecutorial review. 88

It should be noted that a complaint [*stížnost*] is to be distinguished from a **criminal complaint** [*trestní oznámení*], which refers to the initial report of a suspected criminal offence, typically submitted to law enforcement authorities or the public prosecutor to initiate proceedings (cf. s. 158(2) CCP). While it may appear preferable to use “criminal report” to avoid ambiguity, the distinction between reports (from authorities) and complaints (from individuals) exists even at the EU level. For consistency, this text adopts the term criminal complaint despite the resulting terminological dualism. 89

In the Czech criminal process, remedies against decisions made in EPPO cases follow the general structure of the national system but with adjustments for the role of EDPs. Complaints against decisions are primarily governed by ss. 141 et seq. CCP, which regulates the **review process within the national prosecution system**. 90

If a decision is issued by a **law enforcement agency** as the first-instance body, any complaint against it is reviewed by the **supervising prosecutor** in the pre-trial proceedings. The issuing authority can modify or revoke its own decision if the change does not infringe on the rights of other parties involved. However, if the decision was made **with the prior approval or on the instruction of a prosecutor**, it can only be amended or 91

revoked with explicit approval from the prosecutor. In this system, the EDP functions in the same procedural capacity as a national prosecutor.

- 92 When a decision of a law enforcement authority, against which a complaint has been lodged, is neither revoked nor otherwise modified, and the time limit for all entitled parties to submit the complaint has expired, the decision is then subject to review by the supervising prosecutor pursuant to s. 146(2)(a) CCP. If the aforementioned situation arises where the contested decision was **issued with the approval or upon the instruction of a prosecutor**, the case must be escalated to the **next higher-level prosecutor within the national prosecution system**. In the case of EPPO proceedings, this means the matter is referred to the **supervising European Prosecutor** (s. 146(2)(c) CCP).
- 93 If a complaint is filed against a **decision issued by a national prosecutor**, it is usually reviewed by a **higher-level prosecutor**. Exceptions exist to this, outlined in **s. 146a CCP**, such as measures on remand in custody, preliminary measures, asset seizures, and fines imposed during pre-trial proceedings. Then the matter is referred to a **competent court** for review. If the decision was issued by a law enforcement agency, the case is presented to the **court covering the jurisdiction of the supervising prosecutor**.
- 94 In the case of **EPPO prosecutors**, if an EDP makes a contested decision, the complaint is reviewed by the **supervising European Prosecutor** or, if required under **s. 146a CCP**, by the **competent court**. In relation to the EPPO, the **competent court** is determined pursuant to s. 146a(2) CCP and s. 34c of the Act on the Public Prosecutor's Office, based on the **seat of the respective public prosecutor** (see Part A, Chapters 1 and 2). Accordingly, under certain circumstances, this may be the **High Court in Prague** (for EDPs located in Prague) or, in other cases, **regional courts** (for EDPs based in regional cities).¹⁰²

¹⁰² However, some jurisdictions take a different approach. For example, Austria assigns the EDPs jurisdictionally to a single judicial tier. Under § 10 of the Federal Act on the Implementation of the European Public Prosecutor's Office (EUStA-DG), judicial decisions in EPPO investigations fall under the competence of the regional court [*Landesgericht*] at the seat of the competent public prosecutor's office responsible for the case.

ii. Right to Submit a Complaint Against Inappropriate Conduct

Apart from a complaint lodged against a specific decision – there is also the **possibility of lodging a complaint concerning inappropriate conduct**. This is a mechanism enshrined for national prosecutors in the Act on the Public Prosecutor’s Office and applies equally to national EDPs in areas not covered by Art 17(4) EPPO Regulation. 95

This aligns fully with Art 17(4) EPPO Regulation, which stipulates that a Member State may not dismiss or take disciplinary action against an EDP for reasons connected with their responsibilities under the Regulation without the consent of the European Chief Prosecutor. If the European Chief Prosecutor withholds consent, the Member State may request the College to review the matter. 96

The disciplinary responsibility of EDPs **remains partially retained within the framework of national prosecutorial oversight**. Under s. 8(5)(e) of the Act on Proceedings in Matters of Judges, Public Prosecutors, and Court Executors [zákon č. 7/2002 Sb., o řízení ve věcech soudců, státních zástupců a soudních exekutorů], **the head of the prosecution office** where an EDP is **formally assigned** holds the authority to initiate disciplinary proceedings against the EDP (see Part B, Chapter 1). This provision effectively maintains a link between national prosecutorial structures and the disciplinary accountability of EDPs, despite their primary subordination to the EPPO hierarchy. 97

Under s. 16b of the Act on the Public Prosecutor’s Office, it is possible to lodge a complaint against an EDP; however, such complaints are strictly limited to **inappropriate conduct and do not extend to procedural delays or other aspects of case management, unlike complaints against national prosecutors**. The competent authority to handle such complaints is the head of the prosecution office where the EDP is assigned, in line with the general framework for complaints against public prosecutors and staff. The responsible official must investigate the allegations, including hearing the complainant and relevant parties where necessary, and must inform the complainant of any remedial measures taken if the complaint is found to be wholly or partially justified. 98

iii. Other Rights of the Accused

The accused is entitled to **a broad range of additional rights**, including: 99

- **The right to comment on all allegations and evidence against them** – The accused has the right to **remain silent**, but they must be informed of the specific charges against them, including the legal qualification of the offence. This is applicable for all stages of criminal proceedings.¹⁰³ 100

¹⁰³ See s. 160(6) CCP for the investigation stage, s. 176(2) CCP for the period after pre-trial proceedings and before the filing of an indictment, s. 190 CCP for the court’s role before the main hearing, and s. 225(2) CCP for the main hearing itself. **Section 225(2) CCP** explicitly requires that a defendant be notified in advance if the court intends

- 101 - **The right to use their native language** or another language they understand in all proceedings before the authorities, as well as the right to an interpreter. Key decisions must be translated unless the accused explicitly waives this right (s. 28(2) CCP).
- 102 - **The right to present exculpatory evidence** – The accused may introduce facts and evidence in their defence, including the right to search for and propose evidence. However, the responsibility for establishing the evidentiary state of the case lies with the authorities involved in criminal proceedings, and ultimately, the **court bears final responsibility for determining the facts** (s. 2(5) CCP *in fine*).
- 103 - **The right to submit motions, requests, and legal remedies**, including complaints.
- 104 - **The right to legal representation and consultation with defence counsel** – The accused may choose their own defence counsel, consult with them privately (except when responding to a question which is already asked during an interrogation, s. 33(1) CCP), and have their counsel present during questioning and other procedural acts. The accused is also entitled to free legal assistance or reduced legal fees if they lack the financial means.
- 105 - **The right to be present at hearings** – The accused has the right to attend proceedings concerning their case in person.
- 106 - **The right to access the case file** – Unlike a suspect, the accused is entitled to review the case file.
- 107 - ***Favor defensionis* rights** – Certain procedural rights apply exclusively to the accused or their defence counsel, known as *favor defensionis*. These include the right to request a deadline extension (s. 61 CCP), the right to determine the order of final statements (s. 216(2) and (3) and s. 235(3) CCP), the right to the last word (s. 217 CCP), the prohibition of *reformatio in peius*, that is, preventing a worsening of the accused's position in appellate or other remedial proceedings.

d) Defence Counsel in Criminal Procedure

- 108 The role of defence counsel in criminal proceedings is set out in ss. 35–41 CCP. Defence counsel must be registered with the **Czech Bar Association**, although they may be represented by a **paralegal** for specific actions (s. 35(1) CCP). A paralegal, however, may not represent defence counsel in proceedings before a regional court acting as a court of

to assess their offence under a more severe legal provision than that applied by the prosecution. Judicial practice affirms that this requirement extends to any alteration in the legal classification of the offence, not solely to more severe reclassifications. Where such a reclassification occurs, the defendant must be duly informed in sufficient time to prepare an adequate defence; if necessary, the main hearing must be adjourned to facilitate such preparation.

first instance, the High Court, or the Supreme Court; though they may inspect files even in these proceedings. According to s. 35(3) CCP, a counsel who serves as a witness, provides expert opinion, or acts as an interpreter in the same proceedings **cannot simultaneously act as defence counsel**.

From the pre-trial stage onwards, the suspect must be granted **access to defence counsel** 109 in the situations listed under s. 36 CCP [cases of mandatory defence, *nutná obhajoba*].

Access to defence counsel is guaranteed under Art 6 ECHR; the Czech Charter of Fundamental Rights and Freedoms ensures that these rights are upheld. 110

In Prague or in other large cities in the Czech Republic, many defence counsel specialise 111 in economic crime offences, including white-collar crime. However, there is no legal office that exclusively focuses on EU Fraud Offences. The **Czech Bar Association** [Česká advokátní komora] can be easily contacted online or via telephone and it provides information on specialised defence counsel.¹⁰⁴ There are no regional bar associations within the territory of the Czech Republic.

The conduct of defence counsel in the Czech Republic is further governed by **Legal Profession Act** [zákon č. 85/1996 Sb., o advokacii]. Counsels may face disciplinary 112 action in cases of serious or repeated culpable breaches of the obligations imposed by law or professional regulations on counsels or paralegals.¹⁰⁵

Mandatory defence¹⁰⁶ as stipulated in s. 36(3) CCP ensures that in specific situations, 113 unless explicitly waived by the accused, defence counsel must be present already during their first interrogation, i.e. at the commencement of the investigation phase. Consequently, if the resolution on the initiation of a criminal investigation against the accused is served upon the accused (which must occur no later than at the commencement of the first interrogation, cf. s. 160(2) CCP), the law enforcement agency must await the arrival of the defence counsel, unless the accused expressly waives their right to representation.

Detailed provisions regarding mandatory defence are set out in the CCP. In cases where 114 the accused does not appoint defence counsel, certain persons (e.g. siblings or a spouse) **may appoint defence counsel on their behalf pursuant to s. 37 CCP**, even against the accused's will in specific circumstances. Furthermore, s. 38 CCP prescribes time limits

¹⁰⁴ For further details on the organisation of legal counsels within a professional body, see the website of the Czech Bar Association [Česká advokátní komora], available at: <https://www.cak.cz/>. Accessed 31 May 2024.

¹⁰⁵ See the decree No 244/1996 Coll., Legal Profession Disciplinary Code [vyhláška č. 244/1996 Sb., kterou se podle zákona č. 85/1996 Sb., o advokacii, stanoví kárný řád (advokátní kárný řád), ve znění pozdějších předpisů].

¹⁰⁶ The term “nutná obhajoba” corresponds to the German concept of “notwendige Verteidigung”, referring to cases where legal representation is mandatory, and counsel is assigned to an accused who is arrested, detained, or facing criminal charges. It also aligns with the public defender system in the United States and the duty solicitor scheme in England and Wales. However, “nutná obhajoba” does not apply exclusively to indigent persons. As stipulated in the Czech CCP, it applies to all accused persons who are required to have legal representation under the conditions specified in the CCP, irrespective of their financial situation.

for appointing defence counsel when the accused finds themselves in a situation **requiring mandatory defence**.

115 Defence counsel may lodge **a complaint** against measures by Czech EDPs, such as seizing items pursuant to ss. 79a–79g CCP or custody on remand under ss. 67 et seq. CCP.

116 **Mandatory Presence of Defence Counsel**

Section 36

(1)¹⁰⁷ The accused must be represented by defence counsel during pre-trial proceedings:

(a) if they are remanded in custody, serving a sentence of imprisonment, subject to a protective measure involving the deprivation of liberty, or undergoing observation in a medical institution (s. 116(2));

(b)¹⁰⁸ if their autonomy is limited; or

(c) in proceedings conducted against a fugitive.

(2) The accused must also be represented by defence counsel if the court – or, in pre-trial proceedings, the prosecutor – deems it necessary, particularly where doubts arise regarding the accused’s capacity to properly defend themselves due to the physical or mental incapacity.

(3) Defence counsel is mandatory if the accused is being prosecuted for a criminal offence carrying a statutory maximum sentence of imprisonment exceeding five years. This requirement applies from the pre-trial proceedings onwards.

(4) Defence counsel is also required:

(a) during the main hearing if conducted against a detained person; or

(b) in proceedings concerning the imposition or modification of protective detention or protective treatment, except in cases involving protective anti-alcohol treatment.

¹⁰⁷ § 36

(1) Obviněný musí mít obhájce už v přípravném řízení,

a) je-li ve vazbě, ve výkonu trestu odnětí svobody, ve výkonu ochranného opatření spojeného se zbavením osobní svobody nebo na pozorování v zdravotním ústavu (§ 116 odst. 2),

¹⁰⁸ b) je-li jeho svéprávnost omezena, nebo

c) jde-li o řízení proti uprchlému.

(2) Obviněný musí mít obhájce také tehdy, považuje-li to soud a v přípravném řízení státní zástupce za nutné, zejména proto, že vzhledem k tělesným nebo duševním vadám obviněného mají pochybnosti o jeho způsobilosti náležitě se hájit.

(3) Koná-li se řízení o trestném činu, na který zákon stanoví trest odnětí svobody, jehož horní hranice převyšuje pět let, musí mít obviněný obhájce už v přípravném řízení.

(4) Obviněný musí mít obhájce též

a) v hlavním líčení konaném proti zadrženému, nebo

b) v řízení, v němž se rozhoduje o uložení nebo změně zabezpečovací detence nebo o uložení nebo změně ochranného léčení, s výjimkou ochranného léčení protialkoholního.

Section 36a

(1)¹⁰⁹ In enforcement proceedings where the court rules in a public hearing, the convicted person must have legal representation if:

- (a) their legal autonomy is limited;
- (b) they are remanded in custody; or
- (c) there are doubts regarding their ability to adequately defend themselves.

(2) In proceedings concerning a complaint for a breach of the law [stížnost pro porušení zákona], an extraordinary appeal [dovolání], or an application for retrial [návrh na povolení obnovy řízení], the convicted person must have legal representation if:

- (a) the case falls under s. 36(1)(a) or (b);
- (b) the offence in question carries a statutory maximum sentence of imprisonment exceeding five years;
- (c) there are doubts regarding their ability to adequately defend themselves; or
- (d) the proceedings concern a convicted person who is deceased.

Section 36b¹¹⁰

(1) Where legal representation is mandatory under s. 36(3) or s. 36a(2)(b), the accused may waive their right to defence counsel unless the offence in question carries an exceptional imprisonment. The accused may also waive their defence counsel in cases of mandatory legal representation under s. 36(4)(a).

(2) A waiver of defence counsel under paragraph 1 is valid only if made expressly in writing or orally for the record before the authority conducting the proceedings. The waiver must be made in the presence of the defence counsel after prior consultation.

¹⁰⁹ § 36a

(1) Ve vykonávacím řízení, v němž soud rozhoduje ve veřejném zasedání, musí mít odsouzený obhájce,

- a) je-li jeho svéprávnost omezena,
- b) je-li ve vazbě, nebo
- c) jsou-li pochybnosti o jeho způsobilosti náležitě se hájit.

(2) V řízení o stížnosti pro porušení zákona, v řízení o dovolání a v řízení o návrhu na povolení obnovy musí mít odsouzený obhájce,

- a) jde-li o případy uvedené v § 36 odst. 1 písm. a) nebo b),
- b) jde-li o trestný čin, na který zákon stanoví trest odnětí svobody, jehož horní hranice převyšuje pět let,
- c) jsou-li pochybnosti o jeho způsobilosti náležitě se hájit,
- d) jde-li o řízení proti odsouzenému, který zemřel.

¹¹⁰ § 36b

(1) Je-li dán důvod nutné obhajoby podle § 36 odst. 3 nebo § 36a odst. 2 písm. b), může se obviněný obhájce vzdát, nejde-li o trestný čin, za který lze uložit výjimečný trest. Obviněný se může obhájce vzdát i v případě nutné obhajoby podle § 36 odst. 4 písm. a).

(2) Vzdání se obhájce podle odstavce 1 může obviněný učinit pouze výslovným písemným prohlášením nebo ústně do protokolu u orgánu činného v trestním řízení, který vede řízení; prohlášení musí být učiněno za přítomnosti obhájce a po předchozí poradě s ním.

(3) Prohlášení o vzdání se obhájce může obviněný vzít kdykoliv zpět. Spolu se zpětvzetím prohlášení musí obviněný předložit plnou moc obhájce, kterého si zvolil, nebo požádat o jeho ustanovení; pokud tak neučiní, má se za to, že si obhájce nezvolil a obhájce se mu neprodleně ustanoví. Vzal-li obviněný své prohlášení o vzdání se obhájce zpět, nemůže se obhájce znovu vzdát.

(4) Úkony provedené od doručení prohlášení o vzdání se obhájce orgánu činnému v trestním řízení do jeho zpětvzetí není třeba opakovat jen z důvodu, že obviněný neměl v této době obhájce.

(3) The accused may revoke their waiver at any time. Upon revocation, they must either appoint defence counsel or request the appointment of one. If they fail to do so, they will be deemed not to have chosen defence counsel, and one will be appointed without delay. If the accused revokes their waiver, they cannot waive their defence counsel again.

(4) Procedural acts conducted between the submission of the waiver and its revocation shall not be repeated solely on the grounds that the accused did not have defence counsel during this period.

Section 37 Defence Counsel of Choice

(1)¹¹¹ If the accused does not exercise their right to appoint defence counsel, and their guardian fails to do so, the following individuals may appoint one on their behalf: a direct lineal relative, a sibling, an adoptive parent or child, a spouse, registered partner, or cohabiting partner, or an interested party. If the accused has limited legal autonomy, these individuals may appoint defence counsel even against their will.

(2)¹¹² The accused may replace a court-appointed or third-party-appointed defence counsel with one of their own choosing. If the accused notifies the authorities in time to ensure that the new defence counsel is informed within the legally prescribed period, the new counsel will take over from the date of such notification. Otherwise, the previously appointed or chosen counsel remains responsible for the defence until the newly chosen counsel formally assumes the role.

(3) If the accused appoints multiple defence counsel and fails to designate one for service of documents and procedural notifications, the presiding judge or, in pre-trial proceedings, the public prosecutor shall appoint one and inform all appointed counsels accordingly.

Section 37a

(1)¹¹³ The presiding judge or, in pre-trial proceedings, the judge may, even without a formal application, disqualify chosen defence counsel where:

¹¹¹ § 37 Zvolený obhájce

¹¹² (1) Neužije-li obviněný práva zvolit si obhájce a nezvolí-li mu ho ani jeho opatrovník, může mu ho zvolit jeho příbuzný v pokolení přímém, jeho sourozenec, osvojitel, osvojenec, manžel, partner, druh, jakož i zúčastněná osoba. Je-li obviněný omezen ve svéprávnosti, mohou tak učinit tyto osoby i proti jeho vůli.

(2) Obviněný si může místo obhájce, který mu byl ustanoven nebo osobou k tomu oprávněnou zvolen, zvolit obhájce jiného. Oznámí-li změnu obhájce tak, aby obhájce mohl být o úkonu vyrozuměn v zákonem stanovené lhůtě, orgán činný v trestním řízení ode dne doručení takového oznámení vyrozumívá nově zvoleného obhájce. V opačném případě je obhájce předtím ustanovený nebo zvolený, pokud není z obhajování vyloučen, povinen obhajobu vykonávat do doby, než ji osobně převezme později zvolený obhájce.

(3) Jestliže si obviněný zvolí dva nebo více obhájců a orgánu činnému v trestním řízení zároveň neoznámí, kterého z těchto obhájců zmocnil k přijímání písemností a k vyrozumívání o úkonech trestního řízení, určí jej předseda senátu a v přípravném řízení státní zástupce; své rozhodnutí oznámí všem zvoleným obhájcům.

¹¹³ § 37a

- (a) any of the grounds under s. 35(2) or (3) apply; or
 - (b) the defence counsel repeatedly fails to appear at mandatory procedural acts without ensuring a substitute, despite being duly notified.
- (2) The presiding judge or, in pre-trial proceedings, the judge shall also disqualify defence counsel if they represent two or more co-accused whose interests are in conflict. A counsel disqualified on these grounds cannot continue representing any of the accused in the case.
- (3) Before making a decision under paragraphs 1 or 2, the presiding judge or, in pre-trial proceedings, the judge must allow the accused and their defence counsel to present their views, and such views must be considered in the ruling. If defence counsel is disqualified, the accused shall be given a reasonable period to appoint a new one. If mandatory defence applies, s. 38(1) shall be followed.
- (4) A complaint may be lodged against a disqualification decision, and such a complaint shall have suspensive effect.

Section 38¹¹⁴

- (1) If the accused lacks defence counsel in circumstances requiring mandatory defence (ss. 36 and 36a), they shall be given a deadline to appoint one. If they fail to do so within this period, defence counsel shall be appointed to them without delay for as long as mandatory defence applies.
- (2) Where multiple accused are involved, and their interests do not conflict, they shall, as a rule, be assigned a single defence counsel.

(1) Předseda senátu a v přípravném řízení soudce rozhodne i bez návrhu o vyloučení advokáta jako zvoleného obhájce z obhajování

a) z důvodů uvedených v § 35 odst. 2 nebo 3, nebo

b) jestliže se obhájce opakovaně nedostaví k úkonům trestního řízení, při nichž je jeho účast nezbytná, ani nezajistí účast svého zástupce, ačkoliv byl řádně a včas o takových úkonech vyrozuměn.

(2) O vyloučení advokáta jako zvoleného obhájce předseda senátu a v přípravném řízení soudce rozhodne též tehdy, jestliže obhájce vykonává obhajobu dvou nebo více spoluobviněných, jejichž zájmy si v trestním řízení odporují. Obhájce, který byl z tohoto důvodu vyloučen, nemůže v téže věci dále vykonávat obhajobu žádného z obviněných.

(3) Před rozhodnutím podle odstavce 1 nebo 2 předseda senátu a v přípravném řízení soudce umožní obviněnému a obhájci, aby se k věci vyjádřili, a v rozhodnutí k tomuto vyjádření přihlédně. Rozhodne-li o vyloučení obhájce, umožní zároveň obviněnému, aby si v přiměřené lhůtě zvolil obhájce jiného; jde-li o nutnou obhajobu, postupuje podle § 38 odst. 1.

(4) Proti usnesení podle odstavců 1 a 2 je přípustná stížnost, jež má odkladný účinek.

¹¹⁴ § 38

(1) Jestliže obviněný nemá obhájce v případě, kdy ho musí mít (§ 36 a 36a), určí se mu lhůta ke zvolení obhájce. Pokud v této lhůtě nebude obhájce zvolen, bude mu obhájce na dobu, po kterou trvají důvody nutné obhajoby, neprodleně ustanoven.

(2) Je-li obviněných několik, ustanoví se těm, jejichž zájmy si v trestním řízení neodporují, zpravidla obhájce společný.

Section 39

(1)¹¹⁵ The presiding judge or, in pre-trial proceedings, the judge appoints defence counsel and revokes their appointment if the reasons for mandatory defence cease to exist.

(2) To appoint defence counsel, the court maintains an alphabetically ordered list of attorneys who consent to serving as court-appointed defence counsel within the court's jurisdiction.

If no suitable defence counsel is available from this list, one is appointed from the list maintained by the higher court.

Attorneys may request to have a foreign language in which they provide services noted in the register.

(3)¹¹⁶ Appointments are made sequentially based on the order in the list. If an attorney is ineligible due to conflict of interest or other reasons, the next available attorney is appointed. If an accused revokes a waiver of defence counsel under s. 36b, the same defence counsel shall be reappointed if possible.

(4) Where possible, if the accused exercises their right under s. 2(14), defence counsel shall be appointed who provides services in the language the accused declares proficiency in, the language of the accused's nationality, the official language of their country of citizenship, or for stateless persons, the official language of their country of residence or origin.

(5) If multiple cases are merged, and different defence counsel were appointed, the presiding judge or, in pre-trial proceedings, the judge shall revoke the appointments of later-appointed counsels. If appointments were made simultaneously, the counsel assigned in the less serious offence shall be revoked.

¹¹⁵ § 39

(1) Obhájce ustanoví, a pominou-li důvody nutné obhajoby, ustanovení zruší předseda senátu a v přípravném řízení soudce.

(2) Pro účely ustanovení obhájce soud vede abecedně uspořádaný pořadník advokátů (dále jen „pořadník“), kteří souhlasí s výkonem obhajoby jako ustanovení obhájci u tohoto soudu a mají v jeho obvodu, popřípadě sídle, své sídlo. U obvodních soudů v Praze se za sídlo advokáta považuje hlavní město Praha. Nelze-li ustanovit advokáta z tohoto pořadníku, ustanoví soud advokáta z pořadníku advokátů nadřízeného soudu. Na žádost advokáta se do pořadníku uvede cizí jazyk, ve kterém rovněž poskytuje své služby.

¹¹⁶ (3) Advokáti vedení v pořadníku jsou ustanovováni jako obhájci jednotlivým obviněným postupně tak, jak za sebou následují jejich příjmení v pořadníku. Byl-li by tímto způsobem ustanoven advokát, u kterého jsou dány důvody k vyloučení z obhajoby, nebo nemohl-li by být advokát ustanoven z jiných důvodů, ustanoví se první následný advokát, u kterého tyto důvody nejsou. Vzdal-li se obviněný ustanoveného obhájce prohlášením podle § 36b a následně vzal toto prohlášení zpět, ustanoví se mu též obhájce, je-li to možné.

(4) Je-li to možné, obviněnému, který využil právo uvedené v § 2 odst. 14, se postupem podle odstavce 3 ustanoví advokát, který podle údajů v pořadníku poskytuje své služby v jazyce, o kterém obviněný uvedl, že jej ovládá, v jazyce národnosti obviněného, v úředním jazyce státu, jehož je obviněný občanem, nebo, je-li obviněný osobou bez státního občanství, v úředním jazyce státu, kde má obviněný trvalý pobyt nebo který je státem jeho původu.

(5) Dojde-li ke spojení věcí ke společnému projednání a rozhodnutí a obviněnému byl v každé z těchto věcí ustanoven obhájce, předseda senátu a v přípravném řízení soudce zruší ustanovení těch obhájců, kteří byli ustanoveni později. Došlo-li k ustanovení obhájců současně, zruší ustanovení těch obhájců, kteří byli ustanoveni v řízení o méně závažném trestném činu. Je-li jedním z obhájců advokát ustanovený postupem podle odstavce 4, zruší se ustanovení ostatních obhájců.

If one counsel was appointed under paragraph 4, other counsels shall be revoked accordingly.

Section 40¹¹⁷

Court-appointed defence counsel must undertake the defence. However, they may be relieved of this duty on request, either their own or the accused's, and replaced by another appointed counsel. The presiding judge or, in pre-trial proceedings, the judge decides on such requests.

Section 40a¹¹⁸

(1) If the grounds under s. 37a(1) or (2) are given, or if court-appointed defence counsel fails to act for an extended period, the presiding judge or, in pre-trial proceedings, the judge may remove them, even without a formal application. The accused and defence counsel must be allowed to present their views before removal.

(2) A complaint may be lodged against a removal decision, and it shall have suspensive effect.

e) Rights and Duties of Defence Counsel

The role of defence counsel becomes particularly significant during the investigation phase, which constitutes the second standard part of the pre-trial proceedings. At this stage, defence counsel's involvement is crucial, as they are granted specific rights that, when effectively exercised, can substantially contribute to the defence strategy. These rights include access to case files, participation in evidence-gathering procedures, and the ability to challenge procedural irregularities.

117

Section 41 CCP regulates the **rights and duties of defence counsel**. According to s. 41(1) CCP, defence counsel is obliged to:

118

- provide the accused with **necessary legal assistance**,
- effectively use the **means and methods of defence** provided by the law to protect the interests of the accused,
- ensure, through their legal expertise, that **facts exonerating the accused or mitigating their culpability are properly and promptly established** in the proceedings,

¹¹⁷ § 40

Ustanovený obhájce je povinen obhajobu převzít. Z důležitých důvodů může však být obhájce na svou žádost nebo na žádost obviněného povinnosti obhajování zproštěn a místo něho ustanoven obhájce jiný. Povinnosti obhajování zprostí v řízení před soudem předseda senátu a v přípravném řízení soudce.

¹¹⁸ § 40a

(1) Z důvodů uvedených v § 37a odst. 1 nebo 2 nebo nevykonává-li ustanovený obhájce delší dobu obhajobu, předseda senátu a v přípravném řízení soudce i bez návrhu rozhodne o zproštění ustanoveného obhájce povinnosti obhajování; před rozhodnutím umožní obviněnému a obhájci, aby se k věci vyjádřili.

(2) Proti usnesení podle odstavce 1 je přípustná stížnost, jež má odkladný účinek.

- **contest the prosecutor's arguments,**
- contribute to the **correct resolution and adjudication** of the matter.

119

Section 41 Duties and Rights of Defence Counsel

(1) Defence counsel is obliged to provide the accused with the necessary legal assistance and to effectively employ the means and methods of defence stipulated by law to protect their interests.¹¹⁹ This includes ensuring that facts exonerating the accused or mitigating their culpability are adequately and promptly established in the proceedings, thereby contributing to the accurate determination and resolution of the matter.

(2)¹²⁰ During the pre-trial proceedings, defence counsel is authorised to make proposals on behalf of the accused, submit requests and remedies, inspect case files (s. 65) and participate in investigative actions in accordance with the applicable provisions of this Act. They are entitled to communicate with the accused remanded in custody, subject to the conditions specified in s. 33(1).

(3) In court proceedings, defence counsel is entitled to participate in all actions in which the accused has the right to participate.

(4) Where the autonomy of the accused is limited, defence counsel may exercise the rights outlined in paragraphs 2 and 3 even against the wishes of the accused.

(5) Unless otherwise stipulated in the power of attorney at the time of defence counsel's appointment, their mandate expires upon the conclusion of the criminal proceedings. Notwithstanding the expiration of the mandate, defence counsel retains the right to file an extraordinary appeal on behalf of the accused, participate in proceedings before the Supreme Court and submit requests for clemency or a postponement of sentence execution.

(6) At all stages of the criminal proceedings, defence counsel has the right to request in advance a copy or transcript of the protocol (s. 55) concerning any procedural action. The authorities conducting the criminal proceedings (s. 12(1)) are obliged to comply

¹¹⁹ § 41 Povinnosti a práva obhájce

(1) Obhájce je povinen poskytovat obviněnému potřebnou právní pomoc, účelně využívat k hájení jeho zájmů prostředků a způsobů obhajoby uvedených v zákoně, zejména pečovat o to, aby byly v řízení náležitě a včas objasněny skutečnosti, které obviněného zbavují viny nebo jeho vinu zmírňují, a tím přispívat ke správnému objasnění a rozhodnutí věci.

¹²⁰ (2) Obhájce je oprávněn již za přípravného řízení činit za obviněného návrhy, podávat za něho žádosti, opravné prostředky, nahlížet do spisů (§ 65) a zúčastnit se podle ustanovení tohoto zákona vyšetřovacích úkonů. S obviněným, který je ve vazbě, je oprávněn mluvit v rozsahu stanoveném v § 33 odst. 1.

(3) Obhájce je v řízení před soudem oprávněn zúčastnit se všech úkonů, kterých se může zúčastnit obviněný.

(4) Je-li svéprávnost obviněného omezena, může obhájce oprávnění uvedená v odstavcích 2 a 3 vykonávat též proti vůli obviněného.

(5) Nebylo-li zmocnění obhájce při jeho zvolení nebo ustanovení vymezeno jinak, zaniká při skončení trestního stíhání. I když zmocnění takto zaniklo, je obhájce oprávněn podat za obžalovaného ještě dovolání a zúčastnit se řízení o dovolání u Nejvyššího soudu, dále podat žádost o milost a o odklad výkonu trestu.

(6) Obhájce má právo ve všech stádiích trestního řízení vyžádat si předem kopii nebo průpis protokolu (§ 55) o každém úkonu trestního řízení. Orgány činné v trestním řízení (§ 12 odst. 1) jsou povinny mu vyhovět; odmítnout mohou jen tehdy, když to není z technických důvodů možné. Náklady s tím spojené je povinen vůči státu uhradit.

with such a request, unless technical constraints render compliance impossible. Defence counsel must bear the associated costs payable to the state.

2.2.8. Access to National Case File

The last procedural issue to consider during the pre-trial proceedings is access to the case file. As mentioned above, this constitutes an important right of the accused. However, as it pertains to more parties than merely the accused, it is discussed here separately.

Access to the **national case file of the Czech EDPs**, which is later submitted to the EPPO Case File (Case Management System) during the proceedings, is governed by national law. The general layout, the colour of the file and related details are likewise determined according to national law during the pre-indictment and pre-trial stadium. Defence counsel, interested parties, the injured party and the accused have the **right to obtain copies at their own expense**. Access to documents relating to the criminal proceedings is regulated by ss. 65 and 166 CCP.

Access to the EPPO case file is governed by the EPPO Regulation, specifically **Art 45 EPPO Regulation**, though the Regulation's wording regarding direct access remains ambiguous.

In practice, submitting the relevant documents may be challenging, even if legally permissible, given that the EPPO operates in Luxembourg rather than in the jurisdiction where the accused is located. Consequently, defence counsel must prioritise obtaining the national case file.

Section 65¹²¹

(1) The accused, injured party and interested parties, along with their legal counsels and representatives, are entitled to inspect the case files, with the exception of the voting protocol and personal data of the witness pursuant to s. 55(2), to make extracts and notes and to obtain copies of the files or parts thereof at their own expense. The legal representative or guardian of an accused, injured party, or interested parties has the same right if these individuals are not fully autonomous or if their autonomy is limited. Other persons may inspect the files with the consent of the presiding judge or, in pre-trial proceedings, with the consent of the public prosecutor or law enforcement agency, provided it is necessary for the exercise of their right.

¹²¹ § 65 (1) Obviněný, poškozený a zúčastněná osoba, jejich obhájci a zmocněnci mají právo nahlížet do spisů, s výjimkou protokolu o hlasování a osobních údajů svědka podle § 55 odst. 2, činit si z nich výpisky a poznámky a pořizovat si na své náklady kopie spisů a jejich částí. Totéž právo má zákonný zástupce nebo opatrovník obviněného, poškozeného nebo zúčastněné osoby, jestliže tyto osoby nejsou plně svéprávné nebo je-li jejich svéprávnost omezena. Jiné osoby tak mohou činit se souhlasem předsedy senátu a v přípravném řízení se souhlasem státního zástupce nebo policejního orgánu, jen pokud je toho třeba k uplatnění jejich práv.

(2)¹²² In pre-trial proceedings, the public prosecutor or law enforcement agency may deny access to the files and the associated rights under paragraph 1 for serious reasons. Upon request by the interested party, the public prosecutor must urgently review the legitimacy of the denial issued by the law enforcement agency.

However, once the accused and their defence counsel are advised of the opportunity to review the case files and negotiate a plea agreement, access to the files can no longer be denied.

(3) A person entitled to be present during a procedural act cannot be denied access to the protocol of that act. Neither the accused nor their defence counsel can be denied access to the resolution on the initiation of a criminal investigation against the accused (s. 160(1)).

(4) The rights of state authorities and the national member of Eurojust to inspect files pursuant to special statutes remain unaffected by the preceding paragraphs.

(5) When granting access to files, measures must be taken to ensure the protection of classified information under special statutes, as well as data subject to a state-imposed or recognised obligations of confidentiality.

(6) Measures must be adopted during file inspection to prevent the disclosure of information which, under s. 55(1)(c), may only be accessed by authorities involved in criminal proceedings (s. 12(1) CCP) and officials of the Probation and Mediation Service assigned to the matter. In the event of a request by a person subject to criminal proceedings for communication of such information, s. 55(1)(c) shall apply similarly.

Section 166 End of Investigation

(1)¹²³ If the law enforcement agency deems the investigation complete and its findings sufficient to file an indictment, it must **allow the accused, their defence counsel and**

¹²² (2) V přípravném řízení může státní zástupce nebo policejní orgán právo nahlédnout do spisů a spolu s tím ostatní práva uvedená v odstavci 1 ze závažných důvodů odeprít. Závažnost důvodů, ze kterých tato práva odeprél policejní orgán, je na žádost osoby, jíž se odeprění týká, státní zástupce povinen urychleně přezkoumat. Tato práva nelze odeprít obviněnému a obhájci, jakmile byli upozorněni na možnost prostudovat spisy, a při sjednávání dohody o vině a trestu.

(3) Tomu, kdo měl právo být úkonu přítomen, nemůže být odeprěno nahlédnutí do protokolu o takovém úkonu. Obviněnému a jeho obhájci nemůže být odeprěno nahlédnutí do usnesení o zahájení trestního stíhání (§ 160 odst. 1).

(4) Práva státních orgánů a národního člena Eurojustu nahlížet do spisů podle jiných zákonných předpisů nejsou ustanovením předchozích odstavců dotčena.

(5) Při povolování nahlížet do spisů je nutno učinit takové opatření, aby byla zachována tajnost utajovaných informací chráněných zvláštním zákonem a údajů, na které se vztahuje státem uložená nebo uznaná povinnost mlčenlivosti.

(6) Při nahlížení do spisů je nutno učinit taková opatření, aby nebyly zpřístupněny údaje, se kterými se podle § 55 odst. 1 písm. c) mohou seznamovat pouze orgány činné v trestním řízení a úředníci Probační a mediační služby činní v dané věci. V případě žádosti osoby, proti níž se trestní řízení vede, o sdělení těchto údajů se užije § 55 odst. 1 písm. c) obdobně.

¹²³ § 166 Skončení vyšetřování

any injured party who has submitted a proposal pursuant to s. 43(3) (if their residence is known) to **examine the case files and propose** additional investigative measures within a reasonable period. Notification of this opportunity must be given at least **three days in advance**. Where the number of injured parties is substantial, s. 44(2) shall apply accordingly. The period may be shortened with the consent of the accused, their defence counsel and the injured party. If the law enforcement agency finds the proposed additions unnecessary, it shall reject them, record the rejection in the case file and notify the accused, their defence counsel, or the injured party of the rejection. Additionally, the accused who has exercised their right under s. 2(14) shall be invited to indicate whether they require translations of certain documents pursuant to s. 28(4).

(2) If the accused, their defence counsel, or the injured party fail to avail themselves of the opportunity to examine the case files despite proper notification, the law enforcement agency shall record this in the file and proceed as though the action had taken place.

(3) Upon completing the investigation, the law enforcement agency shall submit the case file to the public prosecutor, along with a proposal for filing an indictment, a list of proposed evidence and justification for rejecting any proposed additional evidence. Alternatively, it may submit a proposal for certain decisions pursuant to ss. 171 to 173, s. 307, or s. 309.

Nota bene: Section 166 CCP underscores that, upon conclusion of the investigation, the rights of the defence must be fully respected. The accused and their counsel must be granted timely access to the case file, enabling them to propose additional evidence. The authorities are required to respond to such proposals, even if negatively.

2.3. Substantive Matters

It is not only specifics of procedural law which must be duly observed in the application of Art 26 EPPO Regulation, but also those pertaining to substantive criminal law. This is already relevant when determining the material competence previously discussed.

125

(1) Uzná-li policejní orgán vyšetřování za skončené a jeho výsledky za postačující k podání obžaloby, umožní obviněnému, jeho obhájci a poškozenému, který podal návrh podle § 43 odst. 3, pokud jsou pobyt nebo sídlo tohoto poškozeného známo, v přiměřené době prostudovat spisy a učinit návrhy na doplnění vyšetřování. Na tuto možnost upozorní obviněného, jeho obhájce a poškozeného nejméně tři dny předem. Je-li počet poškozených velmi vysoký, platí obdobně § 44 odst. 2. Uvedenou lhůtu lze se souhlasem obviněného, obhájce a poškozeného zkrátit. Nepovažuje-li policejní orgán navrhované doplnění za nutné, odmítne je. O těchto úkonech učiní policejní orgán záznam ve spise a o odmítnutí návrhů na doplnění vyšetřování vyrozumí obviněného, jeho obhájce nebo poškozeného. Obviněný, který využil právo uvedené v § 2 odst. 14, se zároveň vyzve, aby se vyjádřil, zda požaduje přeložení některých písemností podle § 28 odst. 4.

(2) Nevyužijí-li obviněný, jeho obhájce nebo poškozený možnosti prostudovat spisy, ačkoliv na ni byli řádně upozorněni, učiní o tom policejní orgán záznam do spisu a postupuje dále, jako by k tomuto úkonu došlo.

(3) Po skončení vyšetřování předloží policejní orgán státnímu zástupci spis s návrhem na podání obžaloby se seznamem navrhovaných důkazů a zdůvodněním, proč nevyhověl návrhům na provedení důkazů dalších, nebo učiní návrh na některé rozhodnutí podle § 171 až 173, podle § 307 nebo podle § 309.

Once the decision to open a case has been made, the EDPs must formulate an investigative strategy and collect relevant evidence. This process seeks to establish the occurrence of a criminal offence, including the offender's criminal liability and the constitutive elements of the alleged crime. In the case of a PIF offence, this requires evaluating the offence under the conditions specified in national law, taking into account the specific elements of PIF offences applicable within the respective jurisdiction.

- 126 Accordingly, whether acting as a state authority or, even more so, as defence counsel, one must not only consider the national offences classified as PIF offences within the relevant jurisdiction – requiring an understanding of the special part of substantive criminal law – but also possess a broader understanding of the general concept of criminal liability in the Czech Republic.

2.3.1. Foundations of Criminal Liability

- 127 The Criminal Code (hereinafter referred to as “CC”) provides the primary legal framework for determining which offences fall within the scope of the PIF Directive (Directive (EU) 2017/1371, particularly Arts 3, 4, 5 et seq.). Moreover, it establishes comprehensive rules for the construction of criminal liability, which must be satisfied in cases concerning PIF offences.
- 128 In accordance with s. 13(1) CC, a criminal offence is “**an unlawful act that is punishable under criminal law and possesses the characteristics defined therein**”.¹²⁴ Though this may appear to be a circular definition, it is of critical importance, particularly when considering that this specific formulation was only introduced with the adoption of the new Criminal Code, in force since 2009.
- 129 Prior to this reform, criminal offences were not defined solely by their formal elements but also by a material element – namely, societal harm [*společenská škodlivost*] – in line with the socialist legal doctrine inherited from the former Czechoslovak system. This requirement functioned as a filtering mechanism, ensuring that only acts deemed significantly harmful to society were prosecuted; but at the same time, it allowed for speculative interpretations of what is harmful to society, especially under the undemocratic regime prior to 1989.
- 130 This distinction is not merely of historical relevance. Some legal systems, particularly in former Soviet-occupied states, continue to incorporate societal harm as a prerequisite for criminal liability. This should be considered when interpreting individual offences within such jurisdictions and may feature an effective line of defence. While the Czech

¹²⁴ § 13 Trestný čin

(1) Trestným činem je protiprávní čin, který trestní zákon označuje za trestný a který vykazuje znaky uvedené v takovém zákoně.

(2) K trestní odpovědnosti za trestný čin je třeba úmyslného zavinění, nestanoví-li trestní zákon výslovně, že postačí zavinění z nedbalosti.

Republic abandoned this approach with the 2009 reform, it finds a subtle echo in the **principle of the subsidiarity of criminal repression** [*subsidiarita trestní represe*]. This principle dictates that criminal liability should be **applied only where other forms of legal liability** (e.g. administrative or civil sanctions) are insufficient, thereby maintaining a vestige of the prior material assessment while ensuring **alignment with modern rule-of-law principles**.¹²⁵ This comes into play chiefly with *mala prohibita*, not *mala in se*.

a) Elements of a Criminal Offence

The abovementioned definition in s. 13(1) CC establishes that a crime must possess **characteristics defined in criminal laws**. These characteristics, together with doctrinal interpretations, are typically classified into three categories. The first category is **unlawfulness**;¹²⁶ the second consists of **general characteristics** applicable to all criminal offences;¹²⁷ and the third encompasses **specific characteristics (constituent elements)** that distinguish individual crimes. These are briefly introduced in the table further below, including relevant remarks.

131

Constituent elements [*skutková podstata trestného činu*] are the fundamental cornerstone of criminal offence construction in the Czech Republic. In other words, what the German and Austrian legal systems refer to as *Tatbestand*, must be analysed in accordance with substantive criminal law, as codified in the Criminal Code and partially in ancillary criminal statutes (but not secondary criminal law, per the principle of *nullum crimen sine lege*).¹²⁸ This assessment includes an analysis of the **objective elements** [objektivní stránka] of the offence,¹²⁹ the **subjective elements** [subjektivní stránka],¹³⁰ the **object** [objekt] and the **subject** [subjekt/pachatel]. In other words, broadly speaking, both *actus reus* and *mens rea* must be established.¹³¹

132

¹²⁵ **Section 12(2)** The criminal liability of an offender and the associated criminal law consequences may be imposed only in cases of socially harmful conduct where the application of liability under another legal provision is insufficient.

¹²⁶ This is a universally recognised condition and a fundamental element of the concept of crime (though with some differences, see subsequent footnote), acknowledged across jurisdictions and legal traditions worldwide. See, for example, Stasi 2021, pp. 31–47.

¹²⁷ See Eser 1987, pp. 17–65, on the historical implications and the differences between the common law and civil law approach; Bohlander 2009, pp. 29 et seq. (*Tatbestand*), pp. 77 et seq. (*Rechtfertigungsgründe*), pp. 115 et seq. (*Guilt and Excusatory Defences*).

¹²⁸ Bohlander 2009, pp. 29 et seq. Ancillary statutes in the Czech Republic pertain to criminal liability of legal persons and juveniles, as per the general overview of applicable statutes in Part A.III, Chapter 2.

¹²⁹ These issues, common to most criminal law systems, include questions of causation, adequacy and the limitations of an unbounded *sine qua non* formula. For a recent discussion, see Ambos and Duff et al. 2022 Vol. 2, pp. 57–94.

¹³⁰ While the terminology is not entirely congruent and varies in detail, these concepts can nonetheless be regarded as fundamental elements of subjective offence requirements in continental European criminal codes. Moreover, the PIF Directive explicitly mandates their separate consideration for PIF offences.

¹³¹ See for the common terms in comparing criminal law and criminal procedure Child and Simister et al. 2022, Chapter 4, Chapter 5 and Chapter 15.

133 From a comparative perspective, which is crucial for the EPPO as it operates across various jurisdictions, it can be observed that similar or equivalent conditions exist in all EU Member States. However, there is a divide where common law systems diverge from civil law systems, presenting distinct approaches and frameworks.

134 For a more in-depth examination of these issues in the Czech context, practitioners may refer to **existing legal commentaries** on the Czech Criminal Code, as well as relevant analyses of the legal systems of other EU Member States participating in the EPPO. Regarding substantive criminal law, the primary references include the commentaries by Šámal et al. (2023) and Ščerba et al. (2022), with the older but still relevant work of Drašík et al. (2015) also providing useful insights.¹³² Additional commentaries, such as those concerning the criminal liability of legal persons, will be referenced throughout the text where relevant. However, while these commentaries serve as valuable reference guides, they should not replace a comprehensive analysis of the applicable Czech and EU legal frameworks:

135 *Table 11: Elements of a Criminal Offence under Czech Law*

Element	Explanation
Unlawfulness [<i>protiprávnost</i>]	The act must be prohibited by law and not justified under any legal exemption (e.g. self-defence, necessity). Justificatory defences [<i>okolnosti vylučující protiprávnost</i>] are demonstratively listed in s. 28–32 CC, however, contrary to some other neighbouring jurisdictions, notably Slovak law, this enumeration is not exhaustive. For reference, the justificatory defences under Czech law include: - Self-defence [<i>nutná obrana</i>]: s. 29 CC - Necessity [<i>krajní nouze</i>]: s. 28 CC¹³³ - Consent of the injured party [<i>svolení poškozeného</i>]: s. 30 CC - Permissible risk [<i>přípustné riziko</i>]: s. 31 CC - Authorised use of a weapon [<i>oprávněné použití zbraně</i>]: s. 32 CC
General characteristics [<i>obecné znaky</i>], which apply to all offences indiscriminately. ¹³⁴	
Age [<i>věk</i>]	Minimum age of criminal liability in the Czech Republic is fifteen years (s. 25 CC). However, between fifteen and eighteen years of

¹³² The 2022 version of Ščerba et al. is available only online, while the print edition dates to 2020.

¹³³ For an extensive analysis of the defence of necessity, see Pelc 2021.

¹³⁴ Naturally, these general characteristics do not apply to legal persons. Instead, the assessment should focus on whether the legal person falls within the category of persons exempt from criminal liability under the relevant statute, such as the Czech Republic and local authorities [*územní samosprávné celky*] when exercising public authority (s. 6(1) of the Act on Criminal Liability of Legal Persons and Proceedings Against Them).

	age, criminal liability remains conditional upon stage of mental development [<i>podmíněná přičetnost / relativní trestní odpovědnost</i>]. Offences committed by juveniles are called juvenile offences [<i>provinění</i>]. In some cases, minors aged 12–14 may be subject to juvenile justice measures under special statutes, but cannot be found guilty of committing a crime.
Mental capacity [<i>přičetnost</i>]	The offender must be mentally competent at the time of the act (s. 26 CC). If deemed legally incapacitated, criminal liability is excluded. Mental capacity is presumed and is assessed only when there are indications or suspicions of its absence or limitation. A person who at least by negligence induces their own state of mental incapacity and commits in this state an act which would otherwise be a criminal offence, may only be held criminally liable for the offence of intoxication [<i>opilství</i>], as defined in s. 360 CC. ¹³⁵
Special characteristics [<i>zvláštní znaky</i>], which allow for distinction between individual offences as defined in the special part of the CC [<i>zvláštní část trestního zákoníku</i>]. They may also be called constituent elements [<i>skutková podstata trestného činu</i>].	
Subject [<i>subjekt</i>]	The person committing the offence; must be a natural person or, in cases of corporate liability, a legal person under Act on the Criminal Liability of Legal Persons and Proceedings Against Them. ¹³⁶ Certain offences can only be committed by subjects possessing specific attributes, characteristics, or holding a particular status (e.g. a public authority, a soldier, or a mother).
Subjective elements [<i>subjektivní stránka</i>]	Evaluates whether the offender committed the offence intentionally [<i>úmysl</i>] or by negligence [<i>nedbalost</i>]. Criminal liability for a criminal offence requires intentional culpability, unless the CC explicitly provides negligence as sufficient (s. 13 (2) CC).

¹³⁵ This applies only when the person inducing themselves into such state does not foresee the possibility of committing a criminal offence while in that condition (*actio libera in causa dolosa, actio libera in causa culposa*). If they do anticipate this, they will be held liable for the intentional or negligent offence committed. As a result, s. 360 CC reflects, to some extent, the German concept of a Rauschdelikt, ensuring liability where the offender, while in a self-induced state of mental incapacity, commits an otherwise criminal offence that would not be punishable due to their lack of mental capacity at the time of commission. However, notable distinctions remain, and these must be carefully considered in comparative legal analysis.

¹³⁶ Zákon č. 418/2011 Sb., o trestní odpovědnosti právnických osob a řízení proti nim.

	Czech CC also recognises gross negligence in s. 16(2) CC [<i>hrubá nedbalost</i>]. ¹³⁷ For gross negligence to be applicable, it must be explicitly stipulated as a required element within the specific offence.
Object [<i>object</i>]	The interest protected by the statute or value affected by the criminal offence (e.g. life, property, public order).
Objective elements [<i>objektivní stránka</i>]	The external manifestation of the crime, namely: the act [<i>jednání</i>], the consequence [<i>následek</i>], and causation [<i>příčinná souvislost</i>]. The act can be committed by commission [<i>konání</i>] or omission [<i>opomenutí</i>]. It is important to differentiate between genuine omissive offences [<i>pravé omisivní trestné činy</i>] and non-genuine omissive offences [<i>nepravé omisivní trestné činy</i>]. In cases of genuine omission offences, the law explicitly criminalises failure to act (e.g. failure to provide assistance under s. 150 CC). At that point, the offender is criminally liable irrespective of whether any damage ensues. In contrast, non-genuine omission offences do not require literal prohibition of omission within that specific offence. Instead, they rely on the principle that certain individuals have a general legal duty to act in certain situations (s. 112 CC). When such a person fails to fulfil this duty, they may be held criminally liable, even if the relevant offence does not expressly prescribe liability for omission. Given the potentially broad scope of this principle, its application is carefully codified to prevent excessive expansion of criminal liability. The consequence is an immaterial category and, contrary to historical doctrine, is not necessarily linked to harm inflicted upon a specific material object. Causation is constructed around the principles of but-for test (<i>conditio sine qua non</i>), supplemented with other tests which limit this scope (gradation and isolation). For German-related jurisdictions, it should be noted that the Czech Republic does not formally follow the doctrine of <i>Objektive Zurechnung</i> nor the concept of adequate causation [<i>zásada adekvátní příčinné souvislosti</i>].

Source: The authors.

¹³⁷ This features a heightened form of negligence, characterised by a substantial degree of carelessness or recklessness, where the offender's failure to observe necessary caution demonstrates a clear disregard for legal or societal norms, approaching the threshold of intent (*dolus eventualis*).

b) Misdemeanours and Felonies

Another crucial aspect of Czech substantive criminal law is the classification of offences into **misdemeanours** [*přečin*], **felonies** [*zločin*] and the subcategory of the latter, **particularly serious felonies** [*zvlášť závažný zločin*]. 136

In the context of white-collar crime, this classification is particularly relevant. Many economic and financial offences fall within the category of felonies due to their potential for substantial harm, yet they may not always reach the threshold of particularly serious felonies. 137

This distinction is not merely theoretical but has significant implications for sentencing or procedural safeguards, including obligatory representation by defence counsel; whether pre-trial custody on remand is permissible; or the extent of prosecutorial discretion in case resolution by way of conditional suspension of investigation. 138

Section 14 Misdemeanours and Felonies¹³⁸

(1) Criminal offences are divided into misdemeanours and felonies.

(2) **Misdemeanours** include all negligent criminal offences and those intentional criminal offences for which the Criminal Code prescribes a maximum term of imprisonment of up to five years.

(3) **Felonies** encompass all criminal offences that do not qualify as misdemeanours under the Criminal Code. **Particularly serious felonies** are those intentional criminal offences for which the Criminal Code prescribes a maximum term of imprisonment of at least ten years.

c) Participation of Multiple Persons in a Criminal Offence

Another complex issue arising from the general part of Czech criminal law is the number and role of individuals involved in the commission of a criminal offence. If multiple individuals participate, the act may not be an isolated incident but rather a case of **co-perpetration** [*spolupachatelství*, s. 23 CC] or an **indirect offender** [*nepřímý pachatel*, s. 22(2) CC]. 139

Czech law further distinguishes the criminal liability of a **participant** [*účastník*] who does not directly commit the act but contributes to its commission (s. 24 CC). Participa- 140

¹³⁸ § 14 Přečiny a zločiny

(1) Trestné činy se dělí na přečiny a zločiny.

(2) Přečiny jsou všechny nedbalostní trestné činy a ty úmyslné trestné činy, na něž trestní zákon stanoví trest odnětí svobody s horní hranicí trestní sazby do pěti let.

(3) Zločiny jsou všechny trestné činy, které nejsou podle trestního zákona přečiny; zvlášť závažnými zločiny jsou ty úmyslné trestné činy, na něž trestní zákon stanoví trest odnětí svobody s horní hranicí trestní sazby nejméně deset let.

tion is categorised into three forms: **abetting** [*návod*], **assistance** [*pomoc*] and **organising** [*organizátorství*].¹³⁹ If a participant successively engages in multiple forms of participation in the same offence, only **the most serious form** is considered for the purposes of criminal liability.

141 Unlike some legal systems where participation is treated as a separate offence, Czech law generally applies the principle of **accessory liability** [*akcesorita účastenství*], meaning that a participant's liability depends on the criminality of the principal act. This principle is further divided into **qualitative** and **quantitative** accessory liability.

142 **Qualitative accessory liability** [*kvalitativní akcesorita*] requires the principal offender's act meet all features of a crime, meaning that it possesses all the necessary elements of a crime and is not negated by a justificatory defence (e.g. self-defence or necessity). **Quantitative accessory liability** [*kvantitativní akcesorita*] requires that the principal offender at least attempt the offence for the participant to be held liable; mere preparation does not suffice. Contrary to some other European jurisdictions, Czech law therefore maintains that **even the criminal liability of the organiser** is dependent on the liability of the principal offender. This applies even in cases where the organiser's actions may be more harmful or influential in orchestrating the offence, reinforcing the principle of accessory liability.

d) Stages of a Criminal Offence

143 As was hinted above, Czech substantive criminal law differentiates between various stages in the commission of an offence. The general stages include **a completed offence** [*dokonaný trestný čin*] and **an attempted offence** [*pokus trestného činu*]. Under Czech law, the absence of a successful criminal outcome does not preclude liability for an attempted PIF offence, as **attempts** are prosecutable in the same manner as completed offences (s. 21 CC), provided the intent to commit the crime is established and the act has progressed beyond mere preparation.

144 In cases of a **particularly serious felony**, criminal liability may arise not only from the attempt but also from **preparation** [*příprava*] if the Criminal Code explicitly provides that preparation constitutes a criminal offence for the specific crime (s. 20 CC).¹⁴⁰ Preparation entails acts creating conditions for the commission of the crime, such as procuring weapons, but it does not yet amount to an attempt, as it lacks direct execution. This stage is only punishable where the law expressly provides, ensuring that liability for preliminary conduct is reserved for the most serious offences.

¹³⁹ See Hauck 2025, Art 5, mn. 1, 5 et seq.. For various translations of these terms, refer to the EUR-Lex database translations of the PIF Directive 2017/1371.

¹⁴⁰ See Hauck 2025, Art 5, mn. 1 et seq. on the various situations in the Codes of the Member States.

Interestingly, s. 20 CC, which defines preparation, **explicitly includes abetting, assistance and organising** as forms of preparation of particularly serious felonies. Consequently, even if the principal offender does not progress beyond the stage of an attempt, a participant may still be held criminally liable. This constitutes the only exception to the principle of accessory liability [*akcesorita účastenství*], as it allows for the investigation against a participant independently of whether the main offender at least attempted the offence.

145

2.3.2. Overview of Relevant Provisions from the General Part of CC

To provide statutory context for the matters outlined above, the following pages set out the key legal provisions applicable to these aspects:

146

- **Principles of criminal liability** (ss. 12–14 CC):
 - The definition of a criminal offence.
 - The requirement that criminal offences and their sanctions be defined exclusively by criminal law.
 - The principle of subsidiarity of criminal repression.
 - The principle *nullum crimen sine culpa* (“no criminal offence without culpability”).
 - Criminal liability arises only where intent (*dolus*) is present, unless the law explicitly provides otherwise¹⁴¹
- **Culpability** (ss. 15–19 CC):
 - Concept of *dolus* (intent) and *culpa* (negligence).
 - Specific aggravating circumstances related to culpability.
 - Issues of factual error (*error facti*) and legal error (*error iuris*).
- **Preparation and attempt** (ss. 20–21 CC):
 - Legal provisions governing the preparation and attempt of a criminal offence.
- **Offender, accomplice and participant in the crime** (ss. 22–24 CC):
 - Includes **direct and indirect offenders**.
 - Principles of **accessory liability**, including considerations of quality (*in qualitate*) and quantity (*in quantitate*).
 - Rules on criminal liability based on **age, mental incapacity and diminished capacity**.
- **Penalties** (ss. 36 et seq. CC):
 - **Imprisonment** [*trest odnětí svobody*]: ss. 55–59 CC
 - **Home detention** [*trest domácího vězení*]: ss. 60–61 CC
 - **Community service** [*obecně prospěšné práce*]: ss. 62–65 CC
 - **Forfeiture of assets** [*propadnutí majetku*]: ss. 66 CC

¹⁴¹ For a discussion of the principles of criminal liability, see Jelínek 2016.

- **Monetary penalty** [*peněžitý trest*]: ss. 67–69 CC
- **Forfeiture of things or other valuables** [*propadnutí věci nebo jiné majetkové hodnoty*]: ss. 70–72 CC
- **Prohibition from activities** [*zákaz činnosti*]: ss. 73–74 CC
- **Prohibition from keeping or rearing animals** [*zákaz držení a chovu zvířat*]: ss. 74a–74b CC
- **Exclusion** [*zákaz pobytu*]: s. 75 CC
- **Prohibition from attending sporting, cultural or other civic events** [*zákaz vstupu na sportovní, kulturní a jiné společenské akce*]: ss. 76–77 CC
- **Revocation of titles and honours** [*ztráta čestných titulů a vyznamenání*]: s. 78 CC
- **Reduction of military rank** [*ztráta vojenské hodnosti*]: s. 79 CC
- **Expulsion** [*vyhoštění*]: s. 80 CC

2.3.3. Criminal Liability of Legal Persons

- 147 As previously outlined, the Czech Republic follows the broader European trend in recognising the criminal liability of legal persons. However, this approach is far from uniform across Europe. For example, Hungary adheres to a model of secondary (derivative) liability, where legal persons can only be held liable if a natural person is also found criminally liable. In Germany, legal persons are not subject to criminal liability but may face administrative sanctions. In contrast, Bulgaria does not recognise criminal liability of legal persons at all. Such variability underscores the need for careful attention to national and regional legal frameworks, with the Czech legal framework to be introduced below.
- 148 Since **1 January 2012**, the Czech Republic has recognised the criminal liability of legal persons under **Act on the Criminal Liability of Legal Persons and Proceedings Against Them** [zákon č. 418/2011 Sb., o trestní odpovědnosti právnických osob a řízení proti nim, hereinafter “TOPO”]. The title itself underscores the dual role of the statute as a *lex specialis* concerning both **substantive** and **procedural** criminal law, modifying relevant provisions of both CC and CCP.
- 149 Since the enactment of TOPO, the number of prosecuted legal persons has been gradually on the increase, particularly in relation to **white-collar crime**, many of which fall under the jurisdiction of the **EPPO**. As reflected in recent judgments, corporate liability and white-collar crime have become relevant issues in the EPPO’s prosecutorial focus.

a) Jurisdiction

TOPO features several deviations from the jurisdictional rules set forth in CC to accommodate the different nature of legal persons as offenders and to reflect the Czech approach to their liability. The table below provides a brief overview of the most relevant specifics.

150

Table 12: Modifications of Jurisdictional Rules in TOPO

151

Jurisdiction type	Description
Temporal jurisdiction (<i>ratione temporis</i>)	The Act came into effect on 1 January 2012, and therefore, only offences committed after this date can be prosecuted under TOPO. However, according to case law, the criminal liability of a legal person is not precluded if a natural person acting on its behalf induces a fraudulent scheme, provided that the legal person subsequently utilises this scheme for its benefit after the Act took effect. ¹⁴²
Territorial jurisdiction (s. 2 TOPO)	Under the laws of the Czech Republic, the criminal liability for an act committed on the territory of the Czech Republic is assessed in relation to a legal person that has its registered office in the Czech Republic, operates a business or a branch in the Czech Republic, conducts activities here, or holds assets here. The concept of conducting activities is interpreted broadly and these are not restricted to manufacturing, trade, or other business operations, but may encompass any form of activity. After all, TOPO applies not only to business entities (entrepreneurs) but also to all legal persons, except for those excluded from personal jurisdiction. ¹⁴³
Personal jurisdiction (s. 6 TOPO)	Certain legal persons are excluded from criminal liability, even if they meet territorial criteria. The Czech Republic and its governmental bodies are excluded from criminal liability; and so are higher-level and lower-level local authorities [<i>územní samosprávné celky</i>], but only when they exercise public authority. The fact that

¹⁴² See in detail the decision of the Supreme Court No 3 Tdo 432/2019 of 29 April 2020. According to this, it does not constitute a violation of the prohibition of retroactivity to the detriment of the offender, if a legal person is convicted of fraud (s. 209 CC) for conduct that resulted in unjust enrichment after Act on Criminal Liability of Legal Persons and Proceedings Against Them came into effect, even if the fraud was initiated by a natural person before 1 January 2012. This applies, for example, when a company unlawfully received higher renewable energy subsidies after 1 January 2012 based on fraudulent actions by its executive body prior to that date, provided the company continued to benefit from the fraud through subsequent billing and payments.

¹⁴³ Šámal et al. 2019, p. 89–90.

	any of the aforementioned entities hold shares in another legal person does not preclude the criminal liability of the legal person in which such shares are held. ¹⁴⁴
Subject matter jurisdiction (s. 7 TOPO)	Initially, Czech law operated on a positive enumeration model, listing specific offences for which legal persons could be prosecuted. However, since 2016, the law shifted to a negative enumeration model, whereby legal persons can be held liable for all criminal offences, except for those explicitly excluded (e.g. certain offences such as manslaughter or crimes inherently tied to natural persons). ¹⁴⁵ With the exception of s. 248(2) CC, all white-collar criminal offences can be committed by legal persons.

Source: The authors.

b) Principles of Criminal Liability of Legal Persons

- 152** Before delving into specific rules, it is important to note the overall characteristics of the Czech concept of criminal liability of legal persons.
- 153** Liability of legal persons is **concurrent and independent** [*souběžná a nezávislá*]. The liability of a legal person is independent of the liability of the natural persons involved. Both the legal person and the individuals can be prosecuted simultaneously. It is not necessary either to determine, or to prosecute or to sentence the natural person so that the legal person could be held criminally liable.
- 154** Furthermore, such liability is **genuine** [*pravá*]. Legal persons can be held criminally liable, and the nature of this liability extends beyond mere administrative offences (e.g. it is not limited to sanctioning the legal person solely for an administrative offence of failing to supervise the natural person).
- 155** It is also **derived** [*odvozená*] criminal liability, as it derives from the conduct of specific natural persons, and the legal person is going to be prosecuted for the same crime as the natural person. However, as mentioned earlier, it is not necessary either to determine, prosecute or sentence the respective natural person.

¹⁴⁴ For a discussion of criminal liability within corporate groups [koncern], see Šelleng (2018a; 2018b).

¹⁴⁵ **Section 7 Criminal Offences**

For the purposes of this Act, criminal offences shall mean felonies or misdemeanours as defined in the Criminal Code, with the exception of the following: manslaughter (s. 141 CC), infanticide (s. 142 CC), complicity in another's suicide (s. 144 CC), affray (s. 158 CC), incest (s. 188 CC), bigamy (s. 194 CC), abandoning a child or a person entrusted (s. 195 CC), non-payment of child maintenance (s. 196 CC), domestic abuse (s. 199 CC), breach of competition law under s. 248(2) CC, treason (s. 309 CC), abuse of representation of the State and of international organisations (s. 315 CC), collaborating with the enemy (s. 319 CC), war treason (s. 320 CC), service in foreign armed forces (s. 321 CC), assisting escape from prison (s. 338 CC), forced border-crossing (s. 339 CC), prison mutiny (s. 344 CC), stalking (s. 354 CC), intoxication (s. 360 CC), offences against conscription obligations as set out in Title XI of the Special Part of the Criminal Code, military offences as set out in Title XII of the Special Part of the Criminal Code, and the use of prohibited combat means and unlawful conduct of warfare (s. 411 CC).

Lastly, it is **subjective** [*subjektivní*]. To hold a legal person criminally liable, the intent or negligence of the individuals whose conduct is attributed to the legal person must be established. The form of culpability applicable to the natural person is correspondingly applied to the legal person.¹⁴⁶

156

c) Attribution of Liability

Apart from the abovementioned jurisdictional principles (bearing in mind the **negative enumeration of *ratione materiae***), the following conditions must be met for an act to be attributable to a legal person. The cornerstone of this attribution is s. 8 TOPO, which will also be referenced in this chapter and reproduced below. To hold a legal person criminally liable for the act of a natural person, the following criteria must be satisfied:

157

- **The act was committed by an authorised person** (s. 8(1) TOPO). This condition is satisfied when the act is committed by one of the following:
 - (a) An **executive body** or a **member of the executive body**, or another person in a **managerial position authorised to act on behalf of the legal person**.
 - (b) A person in a **managerial position within the legal person** who performs **management or control activities**, even if not formally part of the executive body.
 - (c) A person **exercising decisive influence over the management** of the legal person, whose actions contributed to the offence.
 - (d) An **employee** or a person in a similar position while performing work tasks, even if they do not fall under (a) to (c).
- **The act was committed in the interest of, or within the activities of, the legal person** (s. 8(1) TOPO).
- **The act is attributable** [*přičitatelný*] (s. 8(2) TOPO). The condition of attributability is satisfied when:
 - (a) The act was committed by the **governing bodies** of the legal person or by persons listed sub 1 (a) to (c).
 - (b) The act was committed by an **employee** (sub 1(d)) as a result of: a **decision, approval, or instruction** from the legal person's governing bodies or authorised persons; or **negligence** by the legal person's governing bodies or authorised persons in exercising control or implementing necessary measures to prevent the offence.

¹⁴⁶ See in detail on criminal liability of legal persons Jelínek 2019, for individual characteristics as discussed above, see pp. 171–204.

- 158** The statute also contains a provision on **exculpation** (s. 8(5) TOPO). A legal person may be exonerated from criminal liability if it can demonstrate that it exercised all reasonable efforts to prevent the unlawful conduct of the individuals specified in s. 8(1) TOPO. Such reasonable efforts may include the implementation of effective compliance programmes, robust internal control systems, and appropriate supervisory mechanisms designed to detect and prevent criminal conduct.
- 159** However, under Czech law, the mere existence of formal compliance structures is insufficient; the legal person must demonstrate that these mechanisms were effectively implemented, actively monitored, and consistently enforced. For detailed rules, see the methodological document of the Supreme Prosecutor's Office titled Application of Section 8(5) of the Act on Criminal Liability of Legal Persons and Proceedings Against Them [Aplikace § 8 odst. 5 zákona o trestní odpovědnosti právnických osob a řízení proti nim].¹⁴⁷
- 160** As the legal person bears the responsibility of demonstrating the existence and effectiveness of these compliance mechanisms, this requirement is sometimes criticised for effectively resulting in a reversal of the burden of proof.¹⁴⁸

Section 8¹⁴⁹ Criminal Liability of Legal Persons

(1) A criminal offence committed by a legal person is an unlawful act carried out in its interest or within the scope of its activities, if such act was committed by:

- (a) An executive body or a member of the executive body, or another person in a managerial position within the legal person who is authorised to act on behalf of or represent the legal person;
- (b) A person in a managerial position within the legal person who performs management or supervisory activities, even if not listed under letter (a);
- (c) A person who exercises decisive influence over the management of the legal person, provided that their conduct was at least one of the conditions contributing to the consequences establishing the legal person's criminal liability; or

¹⁴⁷ Available at: <https://verejnazaloba.cz/wp-content/uploads/2020/11/Metodika-NSZ-k-%C2%A7-8-odst.-5-ZT-OPO-2020.pdf>. Accessed 31 March 2025.

¹⁴⁸ Náhlavská 2020, pp. 247–255.

¹⁴⁹ **§ 8 Trestní odpovědnost právnické osoby**

(1) Trestným činem spáchaným právnickou osobou je protiprávní čin spáchaný v jejím zájmu nebo v rámci její činnosti, jednal-li tak

- a) statutární orgán nebo člen statutárního orgánu, anebo jiná osoba ve vedoucím postavení v rámci právnické osoby, která je oprávněna jménem nebo za právnickou osobu jednat,
- b) osoba ve vedoucím postavení v rámci právnické osoby, která u této právnické osoby vykonává řídicí nebo kontrolní činnost, i když není osobou uvedenou v písmenu a),
- c) ten, kdo vykonává rozhodující vliv na řízení této právnické osoby, jestliže jeho jednání bylo alespoň jednou z podmínek vzniku následku zakládajícího trestní odpovědnost právnické osoby, nebo
- d) zaměstnanec nebo osoba v obdobném postavení (dále jen „zaměstnanec“) při plnění pracovních úkolů, i když není osobou uvedenou v písmenech a) až c), jestliže jí ho lze přičítat podle odstavce 2.

(d) An employee or a person in a similar position (hereinafter referred to as the “employee”) while performing work-related tasks, even if they are not a person listed under letters (a) to (c);

provided that such conduct is attributable to the legal person under paragraph 2.

(2)¹⁵⁰ A legal person may be held criminally liable for an offence referred to in s. 7 if it was committed:

(a) By the governing bodies of the legal person or by persons listed in paragraph 1(a) to (c); or

(b) By an employee referred to in paragraph 1(d) as a result of:

A decision, approval, or instruction from the governing bodies of the legal person or from persons listed in paragraph 1(a) to (c); or

The failure of the governing bodies of the legal person or the persons listed in paragraph 1(a) to (c) to adopt measures they were obliged to take under special statutes, or measures that could reasonably be expected of them. This includes, in particular, failing to conduct mandatory or necessary supervision over the activities of employees or other subordinate persons, or failing to take the necessary actions to prevent or mitigate the consequences of the committed offence.

(3) The criminal liability of a legal person is not precluded even if it is not possible to identify the specific natural person who acted as described in paragraphs 1 and 2.

(4) The provisions of paragraphs 1 and 2 apply even if:

(a) The conduct referred to in paragraphs 1 and 2 occurred before the legal person was established;

(b) The legal person was established, but the court declared its invalidity;

(c) The legal act intended to authorise the person to act on behalf of the legal person is invalid or ineffective; or

(d) The natural person who acted is not criminally liable for such an offence.

¹⁵⁰ (2) Právnícké osobě lze přičítat spáchání trestného činu uvedeného v § 7, jestliže byl spáchán

a) jednáním orgánů právnické osoby nebo osob uvedených v odstavci 1 písm. a) až c), nebo

b) zaměstnancem uvedeným v odstavci 1 písm. d) na podkladě rozhodnutí, schválení nebo pokynu orgánů právnické osoby nebo osob uvedených v odstavci 1 písm. a) až c) anebo proto, že orgány právnické osoby nebo osoby uvedené v odstavci 1 písm. a) až c) neprovedly taková opatření, která měly provést podle jiného právního předpisu nebo která po nich lze spravedlivě požadovat, zejména neprovedly povinnou nebo potřebnou kontrolu nad činností zaměstnanců nebo jiných osob, jimž jsou nadřizeny, anebo neučinily nezbytná opatření k zamezení nebo odvrácení následků spáchaného trestného činu.

(3) Trestní odpovědnosti právnické osoby nebrání, nepodaří-li se zjistit, která konkrétní fyzická osoba jednala způsobem uvedeným v odstavcích 1 a 2.

(4) Ustanovení odstavců 1 a 2 se užijí i tehdy, jestliže

a) k jednání uvedenému v odstavcích 1 a 2 došlo před vznikem právnické osoby,

b) právnická osoba vznikla, ale soud rozhodl o neplatnosti právnické osoby,

c) právní úkon, který měl založit oprávnění k jednání za právnickou osobu, je neplatný nebo neúčinný, nebo

d) jednající fyzická osoba není za takový trestný čin trestně odpovědná.

(5) Právnická osoba se trestní odpovědnosti podle odstavců 1 až 4 zproští, pokud vynaložila veškeré úsilí, které na ní bylo možno spravedlivě požadovat, aby spáchání protiprávního činu osobami uvedenými v odstavci 1 zabránila.

(5) A legal person shall be exonerated from criminal liability under paragraphs 1 to 4 if it proves that it exercised all efforts that could reasonably be required to prevent the unlawful conduct by the persons listed in paragraph 1.

d) Penalties

- 161** The specific nature of legal persons **necessitates modifications to the scope of available criminal penalties**, a distinction that is clearly reflected in TOPO. Sections 15–20 TOPO outline penalties that either derive from the Criminal Code – but are adapted to reflect the specific nature of legal persons (monetary penalties or prohibition of activities) or are specific to legal persons only.
- 162** **Penalties for legal persons** are enumerated in s. 15 TOPO and include: Winding-up, Forfeiture of assets, Monetary penalty, Forfeiture of things or other valuables, Prohibition of activities, Prohibition from keeping or rearing animals, Disqualification from receiving public funding or subsidies, Disqualification from public procurement processes, Publication of the judicial decision.
- 163** As to penalties existing in CC and modified in TOPO, particular attention should be paid to **monetary penalties**, which are especially prevalent in cases of white-collar crime and relevant for EPPO.
- 164** These penalties are structured with **higher thresholds** compared to those applied to natural persons, reflecting the typically greater financial capacity of legal persons and the need to ensure proportionate penalties (see s. 18 TOPO). This severity not only serves a punitive function but also acts as a deterrent against corporate misconduct, particularly in sectors vulnerable to economic crimes such as fraud, corruption, and money laundering.
- 165** With regard to penalties that are independent of CC, the following four constitute standalone penalties under TOPO:
- **Winding-up** [s. 16 TOPO, *zrušení právnické osoby*]
 - **Disqualification from receiving public funding or subsidies** [s. 21 TOPO, *zákaz přijímání dotací a subvencí*]
 - **Disqualification from public procurement processes** [s. 22 TOPO, *zákaz účasti ve veřejných zakázkách*]
 - **Publication of the judgment** [s. 23 TOPO, *zveřejnění rozsudku*].
- 166** The prohibition on receiving public funding or subsidies (s. 21 TOPO) and the prohibition on participating in public tenders (s. 22 TOPO) are specifically tailored to address

financial misconduct by legal persons and to mitigate the broader societal risks associated with such offences. Nonetheless, discussions are currently ongoing about the extension of these penalties to natural persons.¹⁵¹

2.3.4. Overview of PIF Offences

Following the preceding discussion of the general principles of criminal liability, the section below provides an overview of individual PIF offences subject to notification to the EPPO. For the full text of the relevant statutory provisions, see Part B.III, Annex II: PIF Offences.

167

Table 13: PIF Offences in the Czech Republic

Fraud Offences	Corruption + AML Offences + Embezzlement	Tax and Customs Offences
• Fraud (s. 209 CC) • Subsidy fraud (s. 212 CC) • Breach of competition law (s. 248 paragraph 2 alinea 2 CC) • Arranging an advantage in public procurement, public tenders and government auctions (s. 256 CC) • Scheming to defraud in public procurement and tenders (s. 257 CC) • Damaging the financial interests of the European Union (s. 260 CC) • Forging and altering a public document (s. 348 CC) • Participation in an organised crime group (s. 361 CC)	• Embezzlement (s. 206 CC) • Money laundering (ML) (s. 216 CC) • Negligent money laundering (s. 217 CC) • Breach of duty of trust (s. 220 CC) • Negligent breach of duty of trust (s. 221 CC) • Abuse of power by a public official (s. 329 CC) • Negligent obstruction of official business (s. 330 CC) • Accepting a bribe (s. 331 CC) • Bribery (s. 332 CC) • Trading in influence (s. 333 CC)	• Evasion of tax, fees and similar mandatory payment (s. 240 CC)

*Source: The Notification of the Czech Republic in Accordance with Art 117 EPPO Regulation*¹⁵²

¹⁵¹ The most recent draft amendment can be found here: <https://www.psp.cz/sqw/historie.sqw?o=9&T=861>. OLAF did not hesitate to act even in high-profile matters. It conducted an investigation into the then-designated Prime Minister over suspicions of a conflict of interest, raising concerns about the alleged misuse of EU funds with potential criminal implications. The case subsequently proceeded through multiple rounds of first-instance and appellate proceedings, with the final outcome still pending.“, p. 340; EPPO 2025, p. 23.

¹⁵² EPPO 2022c.

2.3.5. Brief Note on “Inextricably Linked Offences” in Czech Law

- 168 When discussing inextricably linked offences [*neoddělitelně spjaté trestné činy*] under **Art 22(3) EPPO Regulation**, one must also consider criminal offences that are not explicitly included in this Compendium (for online sources with Czech statutes, see introduction to Part A.III). The issue of inextricably linked offences has been the subject of considerable discussion, particularly in relation to tax offences (see below Chapter 2.3.6, letter a), lit. ii.)).¹⁵³
- 169 An issue pertaining to the **Czech** structuring of criminal offences (but also present in Slovak, German, and Austrian law) must be addressed: whether the **EPPO can prosecute crimes under both ideal concurrence** [*ideální konkurence*, Idealkonkurrenz] and **real concurrence** [*reálná konkurence*, Realkonkurrenz]. While there has been no academic discussion on this issue in abstract in the Czech Republic,¹⁵⁴ it has been at the very outset explored in **Austrian legal doctrine**, with conclusions that are equally applicable to the Czech approach.¹⁵⁵
- 170 It may initially seem that an **inextricable link** exists only when a **single act** constitutes both a PIF offence and another crime, precluding separate criminal proceedings under *ne bis in idem*, as referenced in **Recital 54 EPPO Regulation**. This emphasises the identity of facts and a single set of inseparable circumstances, and also aligns with Art 54 CISA. The EPPO Regulation extends its jurisdiction to certain cases of **real concurrence**, particularly when the general offence was instrumental in committing or benefiting from the PIF crime (e.g. preparatory acts or securing proceeds). Thus, while *ne bis in idem* shapes the interpretation of inextricably linked offences, the EPPO’s jurisdiction is not strictly limited to single-act cases.
- 171 For example, if **stolen money is used in a bribery offence**, the **EPPO can prosecute both the theft and the bribery**, even though these would traditionally be considered **separate acts** (real concurrence).¹⁵⁶ While the **EPPO retains jurisdiction** in such cases, it must transfer the proceedings to national authorities if the general offence carries an equal or higher maximum penalty than the PIF offence (Art 25(3)(a)), unless the general offence was a means to commit the PIF offence, in which case the EPPO retains jurisdiction, even if penalties are equal. Therefore, both ideal concurrence and certain cases of real concurrence fall within the EPPO’s jurisdiction, albeit under specific statutory conditions.



¹⁵³ For a general discussion on the topic, see Guerra 2021, pp. 49–50; or Zimmermann 2023, pp. 21–37; for specific aspects, consult Gut 2023, pp. 289 et seq.; Neumann 2022, pp. 235–263.

¹⁵⁴ There has been a subtle indication of this issue (see e.g. Růžička et Sotolář 2022b, pp. 258–260), but no broader conceptual abstraction has been formulated so far.

¹⁵⁵ Oshidari 2018, pp. 196–197.

¹⁵⁶ Ibid.

2.3.6. Investigating PIF Crimes: Practical Case Studies

Following the previous general overview of the general part of criminal law and the introduction of PIF offences, we will now focus on specific cases handled by the EPPO in the Czech Republic to provide a comprehensive picture of its practical application. The Czech Republic does not maintain specialised police databases exclusively dedicated to PIF crimes. Therefore, this analysis is based on information known to the authors from their academic and professional experience. It does not aim to present an exhaustive list of cases but rather includes only those where the information is public and safe to disclose.

172

Firstly, we will introduce the typology of revenue and expenditure frauds based on specific ongoing or concluded cases, including those involving cross-border cooperation under Arts 31 and 32 EPPO Regulation. Following this, to provide a clear depiction of the types of criminal offences investigated by the EPPO, we have included judgments from 2023 and partly 2024, concerning cases prosecuted by the EPPO. As will be evident, in the Czech legal environment, most of these cases pertain to subsidy fraud under s. 212 CC, often prosecuted in concurrence with the criminal offence of damaging the financial interests of the European Union under s. 260 CC.

173

Recent studies frequently analyse the peculiarities and typologies of EU-related frauds extensively. These analyses are crucial for EDPs as they provide criminological insights into the structures and patterns of this area of crime. On the EU level, resources such as **PIF Reports**,¹⁵⁷ the **Rule of Law Report** and the “**Impact of Organised Crime on the EU’s Financial Interests**” provide valuable information.¹⁵⁸

174

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



a) Examples of Expenditure and Revenue Frauds

The fraud types identified in the first EPPO Report are divided into two overarching schemes: expenditure fraud and revenue fraud.¹⁵⁹ This distinction applies not only to

175

¹⁵⁷ EU Commission 2022a, EU Commission 2022b.

¹⁵⁸ See also the study of Malan and Bosch 2021 which focuses on organised crime.

¹⁵⁹ See EPPO 2022a. According to the legal experts of the EPPO, four main categories of fraud are distinguished. Non-Procurement Expenditure Fraud involves the use of false information to obtain EU funds outside the scope of public procurement. This form of fraud is commonly encountered in sectors such as agriculture, education, and COVID-related programmes. Typical methods include submitting fabricated farming data, inflating costs, or claiming payments for services that were never delivered. Procurement Expenditure Fraud occurs in the context of EU-funded public tenders and is frequently found in areas such as construction and green technologies. Fraudulent practices may include the submission of false bidder qualifications, bid-rigging, price inflation, or misrepresentation of the origin of goods in order to comply with funding conditions. VAT Revenue Fraud targets the avoidance of value-added tax payments and often involves cross-border and organised criminal activity. Common schemes include carousel fraud (involving missing traders), the use of false invoices, and abuse of import VAT

investigations conducted by delegated public prosecutors but also to OLAF investigators and national authorities in administrative procedures (especially in expenditure cases such as subsidies). This chapter will first address expenditure fraud and then proceed to revenue fraud.

176 The first EPPO reports categorise fraud as follows:¹⁶⁰

- Non-procurement *expenditure* fraud
- Procurement *expenditure* fraud
- VAT *revenue* fraud
- Non-VAT *revenue* fraud
- Corruption cases (accounting for 4% in 2021)

177 Expenditure fraud represents the most common basis for prosecution by Czech EDPs, with non-procurement expenditure fraud occurring more frequently than procurement-related cases.¹⁶¹

i. Expenditure Frauds

178 Governments of Member States, EU bodies and the Commission allocate substantial funds from the EU's general budget to various recipients and beneficiaries. Upon allocation, funds are typically transferred to the recipients' accounts following an assessment of eligibility and administrative conditions. Fraudulent conduct by a recipient, such as using forged documents or false claims, can deceive the allocator into transferring funds. This error, induced by fraud, results in financial loss for the entity managing the budget. A common example of expenditure fraud is subsidy fraud, which can be considered the core focus of the EPPO, particularly in the Czech Republic, as will become evident from the analysis of the judgments in the subsequent chapter. Subtypes of fraud targeting the expenditure side of EU financial resources include budget fraud, subsidy fraud, and extended forms such as construction fraud, structural funds fraud, cohesion fund fraud, procurement fraud, and travel expense fraud.¹⁶²

exemptions through fictitious companies. Non-VAT Revenue Fraud concerns the evasion of customs duties or anti-dumping measures on imported goods. Fraudsters typically employ methods such as under-invoicing, false declarations of origin, or fabricated processing operations in third countries

¹⁶⁰ Information on fraudulent forms and schemes not derived from judicial decisions is drawn primarily from the EPPO's first report (EPPO 2022a), with reference to subsequent reports (EPPO 2023, 2024, 2025), and serves as the basis for outlining scenarios of initial suspicion in this context.

¹⁶¹ EPPO 2022a, p. 25; EPPO 2023, p. 12 (25); EPPO 2024, p. 25; EPPO 2025, p. 23 see further on individual cases adjudicated before Czech courts Chapter 2.3.6, letter b).

¹⁶² EPPO 2022a, pp. 58–61 defining the different types of fraud in EPPO cases.

Under widely accepted principles of criminal law, such fraudulent conduct constitutes a crime, even when only attempted, which must be penalised according to the PIF Directive 2017/1371. 179

The following case study presents the first publicly known EPPO case in the Czech Republic, which – unsurprisingly – concerned subsidy fraud. 180

Case Study 1: The First EPPO Case in the Czech Republic (2021) 181



Proceedings in the First EPPO Case in the Czech Republic

“In January of this year, officers of the National Headquarters Against Organised Crime of the Criminal Police and Investigation Service (hereinafter “NCOZ”) received a criminal report from the Ministry of Finance regarding suspicious circumstances surrounding a subsidy project worth approximately CZK 20 million. Following a prompt and meticulous review of the applicant’s conduct, investigators identified a substantially more complex case than initially suspected.

According to our findings, between 2011 and the present, **the applicant allegedly obtained subsidies totalling almost CZK 130 million for 17 fictitious scientific projects from both EU and Czech state budgets** and attempted to claim an additional CZK 130 million. Two accomplices allegedly assisted in producing fictitious documents.

To secure subsidies, the accused established numerous offshore companies under his control, which were used to generate fictitious offers. Funds obtained from subsidies were allegedly transferred to accounts held by these offshore companies, where the accused had disposal rights.

Investigators found no legitimate income for the accused beyond profits from these subsidies. Moreover, no actual activities linked to the subsidies were identified.

The funds were predominantly used for personal consumption and **investments in movable and immovable property**. In the course of criminal procedure actions, assets exceeding CZK 60 million were seized from bank accounts, as well as from immovable and movable property. Among other items, the seizures included over a thousand model railway trains (of multi-million value), automobiles and an excavator.

Three natural persons are being prosecuted for damaging the EU’s financial interests and for subsidy fraud. Additionally, the principal offender faces charges of **money laundering**. Criminal proceedings were also initiated against three legal persons, two for money laundering and one for damaging the EU’s financial interests and subsidy fraud.

The main offender was taken into custody by the court. The other two natural persons are prosecuted at large.

In the event of a final judgment, the accused natural persons face a sentence of imprisonment of up to 10 years.

NCOZ cooperated with the Financial Analysis Office, the General Financial Directorate and the Ministry of Industry and Trade on the aforementioned matters. Given that most of the funds obtained came from European Union sources, the EDP of the EPPO assumed supervision of the investigation.

This represents the first case in the Czech Republic implemented in this manner in cooperation with the EPPO, where prompt and effective cooperation between NCOZ and the EPPO was established. Thanks to the involvement of the newly appointed supervising EDP, it was possible to carry out the case within a short period of time.”

Source: První případ realizovaný s EPPO. Available at: <https://www.policie.cz/clanek/prvni-pripad-realizovany-s-eppo.aspx>. Accessed 31 March 2025.

ii. Revenue Frauds and Carousel Frauds

- 182** Revenue fraud encompasses a wide range of often complex schemes. The COVID-19 pandemic demonstrated how large-scale EU spending in response to a crisis can create opportunities for new fraudulent activities. One such COVID-19-related revenue fraud case, investigated not only in Germany and Poland but also in the Czech Republic, involved a sophisticated carousel fraud scheme.¹⁶³
- 183** In general, carousel fraud is an area where the EPPO could play a significant role. However, there are substantial limitations to its investigation in the Czech Republic, which the reader should be aware of. These limitations, which complicate the investigation of such cases within the Czech legal framework, will be briefly analysed below.
- 184** Section 240 CC pertains to the criminal offence of tax evasion, specifically targeting the reduction of taxes, duties and analogous mandatory payments. This provision criminalises actions that culminate in the evasion of tax obligations, including the submission of false information or the omission of requisite information, with the intent to diminish tax liability. The penalties for contravening s. 240 CC are stringent, encompassing imprisonment and substantial monetary penalties, particularly when the evasion involves significant sums or is executed in an organised manner. This provision embodies the essential national mechanisms for safeguarding tax obligations, including VAT obligations. For the precise wording, refer to Part B.III, Annex II: PIF Offences.

¹⁶³ Available at: <https://www.epo.europa.eu/en/media/news/germany-epo-secures-five-convictions-major-vat-fraud-investigation-involving-luxury>. Accessed 31 March 2025.

However, the extant legal framework is somewhat deficient in its capacity to infer criminal liability for carousel frauds [*karuselové podvody*, Umsatzsteuerkarussell], a sophisticated form of VAT fraud that exploits the VAT system within the EU.¹⁶⁴ This fraud involves a series of transactions where goods are sold across borders between EU member states, with fraudsters capitalising on the VAT exemption on intra-Community supplies. This creates a chain of transactions where VAT is collected but not remitted to the tax authorities. The goods often circulate through multiple companies, some of which are fictitious or “missing traders”, before being sold back into the domestic market, thereby enabling the fraudsters to claim VAT refunds on non-existent transactions.

185

Traditionally, the criminalisation of tax offences aims to protect national tax revenues. As evidenced in the Czech Republic, the legal framework may not be adequately equipped to address the international dimension of such schemes, unlike jurisdictions such as Germany or Austria. Specifically, it remains impossible to prosecute the entire fraudulent chain in the Czech Republic, including so-called conduit companies, when no VAT revenue is directly lost within Czech jurisdiction but only the conduit company was operating within its boundaries.

186

For example, if an entity within the fraudulent chain merely issues invoices that facilitate VAT evasion in Germany – without any corresponding tax loss occurring in the Czech Republic – criminal investigation is not currently feasible. Investigation is only possible under s. 240(3)(b) CC, which criminalises actions described in paragraph 2(c) when committed in conjunction with an organised group operating in multiple states and on a significant scale. However, the damage must still pertain to Czech tax revenue (with “significant” defined as at least CZK 1,000,000, as per s. 138 CC, see Part B.III, Annex I: General Provisions of the Criminal Code).

187

In one tax evasion scheme, the Czech Republic functioned as a cooperating state, with the case once again tried in Germany.¹⁶⁵ However, even if the Czech Republic had the capacity to prosecute, jurisdictional constraints and the previously mentioned limitations would still have prevented it from asserting jurisdiction.

188

A legislative amendment to s. 240 CC is imperative to enable the investigation of the entire chain involved in tax evasion in instances where the financial loss does not transpire within the Czech Republic.

189

¹⁶⁴ This form of fraudulent behaviour was recently discussed in the Czech academia also by one of the EDPs (see Koupil 2023, pp. 43–45).

¹⁶⁵ Available at <https://www.eppo.europa.eu/en/media/news/two-slovak-citizens-imprisoned-confiscation-orders-over-eu205-million-second-and-third>. Accessed 31 March 2025.

190 Case Study 2: EPPO Investigating Cross-Border Tax Fraud in the Czech Republic



Cross-Border Tax Crime and Money Laundering in Relation to Platinum Coins

“Detectives from the National Headquarters Against Organised Crime of the Criminal Police and Investigation Service (NCOZ) recently participated in an international operation addressing large-scale cross-border tax crime and money laundering involving **platinum coin transactions**. The operation, coordinated by the EPPO in Luxembourg, took place across Germany, Romania, Slovakia and the Czech Republic. The alleged tax crime was predominantly committed in Germany, where criminal proceedings are underway against several persons. The subsequent money laundering reportedly occurred primarily in the Czech Republic and Slovakia.

One individual was detained under a European Arrest Warrant. Additionally, extensive financial investigations led to the freezing of funds in bank accounts. Authorised EPPO prosecutors operating in the respective participating states were actively involved in the criminal proceedings.

The total damage caused by this fraudulent scheme is estimated to amount to at least EUR 23 million.

From the perspective of the Czech Republic, this marks the first case involving cross-border cooperation within the EPPO, with participation from multiple European Union Member States.”

Source: *Mezinárodní operace – krácení daní*. Available at: <https://www.policie.cz/clanek/mezinarodni-operace-kraceni-dani.aspx>. Accessed 31 May 2025.



b) Judicial Decisions

191 **Judgment of the Regional Court in České Budějovice No 17 T 36/2022 of 8 June 2023**

1. Background and Context

The Regional Court in České Budějovice issued a judgment on 8 June 2023 in a case concerning two natural persons convicted of subsidy fraud related to a social entrepreneurship project. Despite corporate entities often being involved in such proceedings, the case focused on liability of natural persons.

The offences resulted in significant financial damage to the European Union, leading to suspended sentences of imprisonment and a ban on holding executive positions in corporate governance and receiving public subsidies for a specified period.

2. Facts of the Case

The defendants engaged in a scheme to fraudulently obtain and misuse EU funds allocated under the Operational Programme of the Ministry for Regional Development of

the Czech Republic [*Operační program Ministerstva pro místní rozvoj*]. The programme aimed to support social enterprises by providing funding for the employment and integration of disadvantaged individuals into the labour market.

As part of their subsidy application, the defendants provided false information, including misrepresentations about their financial resources and the feasibility of employing individuals leaving institutional care. The project was formally designed to establish a social enterprise for the production and sale of perfumes and cosmetics and the organisation of personal development courses, employing three individuals from socially excluded backgrounds. The funding was intended for the purchase of property, a vehicle, and laboratory equipment.

However, after securing the EU subsidy, the defendants diverted the funds for unauthorised personal use, failing to employ the promised individuals or maintain the purchased assets as required under the grant conditions.

The fraudulent scheme resulted in a financial loss of CZK 3,123,778.39 to the European Union. The court found that the defendants had no intention of fulfilling the project's objectives and had deliberately misused the funds for their own benefit.

3. Legal Framework and Offences

- Subsidy fraud [*dotační podvod*]

The defendants were convicted under s. 212(1), (2) and (5)(c) CC, in co-perpetration under s. 23 [for wording, see Annex].

- Damaging the financial interests of the European Union [*poškození finančních zájmů EU*]

The defendants were also convicted under s. 260(1) and (4)(c) CC, in co-perpetration under s. 23.

- Credit fraud [*úvěrový podvod*]

Additionally, one of the defendants was convicted under s. 211(1) CC for **credit fraud**, having falsified income statements to secure personal loans.

Interestingly, both the conduct related to the subsidy and the loan were addressed within a single set of proceedings, with all available information indicating that the prosecution was represented by an EDP throughout. As a result, despite not being explicitly referenced in the judgment, it appears that these offences were considered inextricably linked within the meaning of Art 22(3) EPPO Regulation.

This classification likely stems from the fact that the defendant forged documents related to the company through which the grant subsidy was obtained. More significantly, the

defendant withheld crucial information from the bank, failing to disclose that the property in question was subject to a subsidy agreement and, under the existing conditions, could not be transferred until a specified date.

4. Sentencing and Penalties

The court followed standard sentencing practices for cases of this nature, imposing suspended sentences on imprisonment combined with monetary penalties and restrictions on holding certain positions. Specifically:

Defendant 1: Three-year suspended sentence of imprisonment with a five-year probation period; Ban on holding executive positions in companies and cooperatives, including representation based contractual empowerment, for five years; Five-year prohibition on receiving public subsidies and grants.

Defendant 2: Two-year suspended sentence of imprisonment with a three-year probation period.

192 Judgment of the Regional Court in Ostrava No 48 T 4/2023 of 7 June 2023

1. Background and Context

This case concerned two natural persons and two legal persons convicted of subsidy fraud related to the misuse of EU funds. The case involved fraudulent activities that resulted in significant financial damage. The judgment approved a plea agreement concluded between the defendants and the EDP.

2. Facts of the Case

The defendants engaged in a scheme to fraudulently obtain and misuse EU funds allocated under the European Social Fund. The defendants provided false information in their subsidy applications, including misrepresentations about their legal status and the feasibility of the training project.

The two accused were managing directors and they falsely claimed that their companies were not under criminal investigation. Despite being aware of ongoing criminal proceedings, they submitted applications and received subsidies. The funds were then misused for unauthorised purposes, and the promised training activities were not conducted as required under the grant conditions. The fraudulent scheme resulted in a financial loss of CZK 1,098,710. The court found that the defendants had no intention of fulfilling the project's objectives and had deliberately misused the funds for their own benefit.

3. Legal Framework and Offences

- **Subsidy fraud** [*dotační podvod*]

Two defendants were convicted under s. 212(1) and (5)(c) CC.

- **Damaging the financial interests of the European Union** [*poškození finančních zájmů EU*]

All defendants were convicted under s. 260(1) and (4)(c) CC.

4. Sentencing and Penalties

The court followed standard sentencing practices for cases of this nature, imposing suspended sentences on imprisonment combined with monetary penalties and bans on holding certain positions. The monetary penalty for Defendant 2 in this case would otherwise be considered rather high, but it was issued as a consolidation of all previously imposed monetary penalties against the defendant. This procedure must be undertaken by the most recent judgment, which thereby supersedes the sentencing rulings of preceding decisions. Specifically:

Defendant 1: Two-year suspended sentence of imprisonment with a three-year probation period; Ban on acting as an executive body or member of an executive body and on holding the position of a procurator in a business corporation for three years.

Defendant 2: Three-year suspended sentence of imprisonment with a five-year probation period; Ban on acting as an executive body or member of an executive body and on holding the position of a procurator in a business corporation for eight years; Monetary penalty of CZK 5,621,000.

Defendant 3 (Legal person): Monetary penalty of CZK 100,000; Four-year disqualification from receiving public funding or subsidies.

Defendant 4 (Legal person): Monetary penalty of CZK 100,000; Two-year disqualification from receiving public funding or subsidies.

Appellate Judgment of the High Court in Prague No 4 To 26/2023 of 18 May 2023

193

1. Background and Context

The High Court in Prague ruled on the appeal of the accused against a previous ruling of Regional Court in Ústí nad Labem (No 49 T 11/2022 of 27 February 2023) related to criminal offences of subsidy fraud and damage to the financial interests of the European Union. The proceedings pertained to one defendant – natural person and one defendant – legal person.

2. Facts of the Case

The accused submitted a fraudulent application for an EU subsidy from the European Social Fund under the Operational Programme Employment. The project, titled “Soft Skills Training for Managers” [*Školení měkkých dovedností vedoucích pracovníků*], was intended to provide leadership training for company managers. The application included false information and forged documents, such as attendance sheets and employment

contracts, to falsely claim that the training had taken place and that the participants had attended.

The fraudulent scheme involved listing taxi drivers as managers to meet the eligibility criteria for the subsidy. The accused submitted these false documents to the Ministry of Labour and Social Affairs, resulting in the disbursement of CZK 1,693,608 from EU funds.

Interestingly, the accused legal person was **the legal successor of the originally charged entity**. Under the Czech concept of corporate criminal liability (see in detail above Chapter 2.3.3), this does not preclude prosecution, including in cases of singular succession – and even less so in cases of universal succession.

3. Legal Framework and Offences

- **Subsidy fraud** [*dotační podvod*]

The accused was convicted under s. 212(1) and (5)(c) CC for subsidy fraud.

- **Damaging the financial interests of the European Union** [*poškození finančních zájmů EU*]

The accused was also convicted under s. 260(1) and (4)(c) CC for damaging the financial interests of the European Union.

4. Sentencing and Penalties

Defendant 1: Thirty-month suspended sentence of imprisonment with a four-year probation period; Obligation to compensate for the damage caused during the probation period; Monetary penalty of CZK 204,000.

Defendant 2 (Legal person): Six-year disqualification from receiving public funding or subsidies.

194 Judgment of the Regional Court in Ostrava No 81 T 12/2023 of 1 February 2024

1. Background and Context

The case involved three natural persons and three legal persons, highlighting the complexity of fraudulent schemes in the context of EU funding. The defendants were convicted of subsidy fraud related to the expansion of a technological centre, with the offences resulting in financial damage. The judgment approved a plea agreement concluded between the defendants and the EDP.

2. Facts of the Case

The defendants engaged in a scheme to fraudulently obtain and misuse EU funds allocated under the Operational Programme of the Ministry of Industry and Trade of the

Czech Republic [Operační program Podnikání a inovace Ministerstva průmyslu a obchodu]. The programme aimed to support business development and innovation. The defendants, including by providing false information, manipulated procurement processes to secure funding for the project they proposed.

The fraudulent activities included submitting inflated invoices, falsifying procurement documents, and misrepresenting the actual costs and suppliers involved in the project. The defendants also engaged in a series of transactions that involved overpricing equipment and services, thereby diverting funds for unauthorised uses.

The fraudulent scheme resulted in a financial loss of CZK 45,835,844.90. The court found that the defendants had no intention of fulfilling the project's objectives and had deliberately misused the funds for their own benefit.

3. Legal Framework and Offences

- Subsidy fraud [*dotační podvod*]

The defendants were convicted under s. 212(1) and (5)(c) or (6)(a) CC, depending on the extent of damage caused.

- Damaging the financial interests of the European Union [*poškození finančních zájmů EU*]

The defendants were also convicted under s. 260(1) and (4)(c) or (5) CC, depending on the level of financial harm.

4. Sentencing and Penalties

The court imposed the following penalties, which underscore the relevance of monetary penalties as the most practical measure for legal persons, further differentiating their level of engagement in the fraudulent schemes.

Defendant 1: Three-year suspended sentence of imprisonment with a five-year probation period; Monetary penalty of CZK 1,000,000; Eight-year ban on participating in subsidy proceedings in any capacity.

Defendant 2: One-year suspended sentence of imprisonment with a three-year probation period; Monetary penalty of CZK 100,000.

Defendant 3: One-year suspended sentence of imprisonment with a two-year probation period; Monetary penalty of CZK 100,000.

Defendant 4 (Legal person): Monetary penalty of CZK 5,000,000; Ten-year disqualification from receiving public funding or subsidies.

Defendant 5 (Legal person): Monetary penalty of CZK 300,000.

Defendant 6 (Legal person): Monetary penalty of CZK 500,000.

195 **Judgment of the Regional Court in Ostrava – branch Olomouc No 28 T 12/2023 of 10 January 2024**

1. Background and Context

The case involved two defendants: a natural person and a legal person. The court approved a plea agreement concluded between the defendants and the EDP for committing serious offences against the financial interests of the European Union. The fraudulent activities led to substantial financial harm to the Czech Republic.

2. Facts of the Case:

The defendants engaged in a scheme to misuse EU funds intended for a project within the Operational Programme Business and Innovation for Competitiveness [Podnikání a inovace pro konkurenceschopnost]. The funds were allocated for the purchase of specific machinery to be used exclusively at the quarry. However, the defendants used the machinery at various other locations across the Czech Republic, violating the terms of the subsidy agreement.

The fraudulent activities resulted in a financial loss of CZK 16,167,389.20 to the European Union. The court found that the defendants had no intention of adhering to the project's objectives and had deliberately misused the funds for their own benefit.

3. Legal Framework and Offences:

- **Damaging the financial interests of the European Union [poškození finančních zájmů EU]:**

The defendants were convicted under ss. 260(2) and (5) CC.

4. Sentencing and Penalties:

Defendant 1: Three-year suspended sentence of imprisonment with a three-year probation period; Monetary penalty of CZK 1,000,000; Eight-year ban on dealing with subsidy authorities and participating in subsidy proceedings in any capacity.

Defendant 2 (Legal person): Monetary penalty of CZK 2,000,000; Ten-year disqualification from receiving public funding or subsidies.

3. Article 27 Right of Evocation

3.1. The Evocation Procedure	148
3.2. Investigation (Arts 24(2) and Art 27(3)).....	150
3.3. Authorities Notifying the EPPO	150
3.4. Urgent Measures by National Authorities (Paragraph 2)	150
3.5. Finalisation of the National Investigation (Paragraph 7).....	151
3.6. Stages of Czech Pre-Trial Proceedings.....	154
3.6.1. Decisions Concluding Proceedings Prior to Investigation.....	156
3.6.2. Decisions Concluding Investigation.....	159

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

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

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

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

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

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

6. The right of evocation set out in this Article may be exercised by a European Delegated Prosecutor from any Member State whose competent authorities have initiated an investigation in respect of an offence that falls within the scope of Articles 22 and 23.

Where a European Delegated Prosecutor, who has received the information in accordance with Article 24(2), considers not to exercise the right of evocation, he/she shall inform the competent Permanent Chamber through the European Prosecutor of his/her

Member State with a view to enabling the Permanent Chamber to take a decision in accordance with Article 10(4).

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

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

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

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

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

3.1. The Evocation Procedure

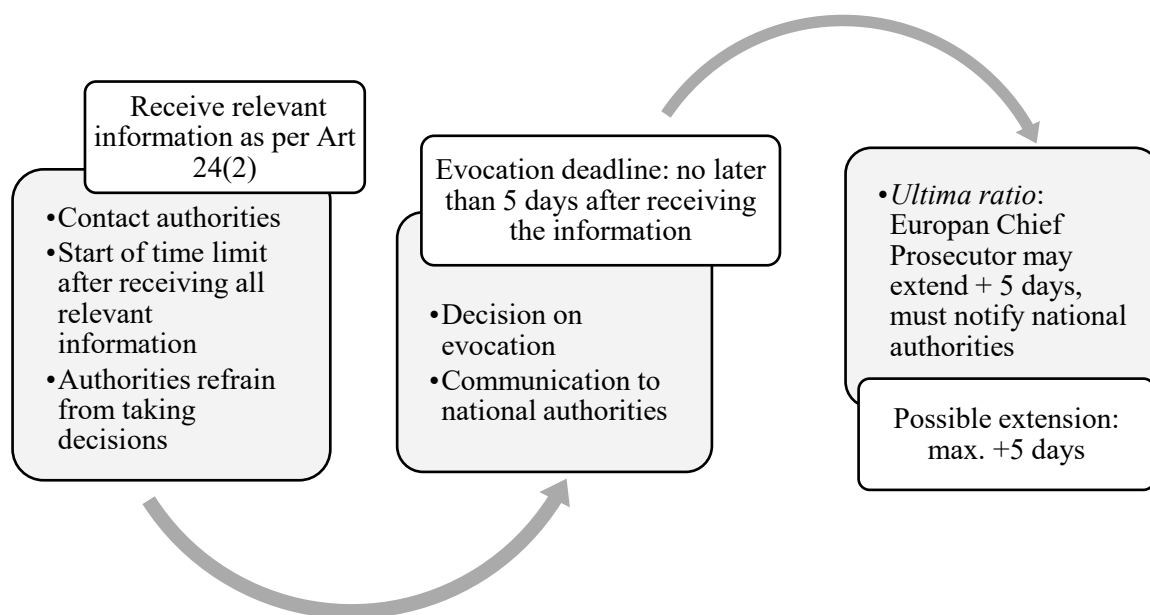
- 1 If a national prosecutor or an authority with investigative powers has **already commenced an investigation** (see below Chapter 3.2.) or undertaken procedural steps under national law, **the EPPO is precluded from initiating its own investigation by virtue of Art 26 EPPO Regulation**. For these situations, Art 27 EPPO Regulation features an **alternative procedural instrument** on how to proceed in instances where an investigation has already been commenced and a suspicion exists that the offence falls within the jurisdiction of the EPPO.
- 2 The EPPO is mandated to act *proprio motu* on behalf of the Union and its financial interests, by actively analysing mandatory notifications of PIF offences submitted to the EPPO (*notitiae criminis europea*), reporting alleged or committed crimes that threaten

the financial interests of the EU. This system ensures that potential offences are consistently assessed and that overlaps between national and EU competencies are effectively managed. The EPPO may also become aware of an investigation through its independent operational activities.

The decision to evoke a case lies with the **EDPs** located in individual Member States. This right can be exercised in any case where national authorities have initiated criminal proceedings. If multiple EDPs across different Member States have been notified, each of them holds the right to evoke the case. The EPPO Regulation **does not establish specific criteria for prioritising** which EDP should exercise this right, leaving the selection largely to the discretion of the involved prosecutors.

If the EDP considers that the right of evocation should not be exercised, they are obliged to refer the case to the **Permanent Chamber**. The Permanent Chamber is then entitled to instruct the EDP to **exercise** the right of evocation, unless the threshold outlined in Art 27(8) EPPO Regulation is applicable. In the Czech context, this process operates in parallel with national procedural rules governing the initiation of criminal proceedings, where public prosecutors [*státní zástupci*] traditionally play a central role in directing investigations.

Figure 5: Right of Evocation, Time Limits, Refraining from Taking Decisions



Source: The authors.

Nota bene: If Art 27 EPPO Regulation is applied and a decision to evoke a case is made, the same rules outlined above shall apply (see Art 26 EPPO Regulation).

3.2. Investigation (Arts 24(2) and Art 27(3))

- 6 As previously outlined, the EPPO's right of evocation may be exercised at any stage of Czech pre-trial proceedings, whether during the proceedings prior to investigation ("verification") or during the investigation of the accused (see above Art 26 EPPO Regulation, Chapter 2.2.1).
- 7 When the EPPO exercises its right to evoke a case, it is not required to repeat procedural acts already conducted within the national proceedings. Thus, if the proceedings prior to investigation have been initiated and a record on the commencement of pre-trial proceedings has been drafted, the EPPO need not replicate this step. Similarly, if the investigation *stricto sensu* has already commenced, the EPPO is not obliged to issue a new resolution on the initiation of a criminal investigation against the accused.

3.3. Authorities Notifying the EPPO

- 8 According to the notification of the Czech government to the EPPO, it is the public prosecutors who bear the primary obligation to notify on potential cases eligible for evocation.¹⁶⁶

3.4. Urgent Measures by National Authorities (Paragraph 2)

- 9 Art 27(2) EPPO Regulation **extends beyond urgent and unrepeatable actions primarily associated with the securing of evidence under Czech law**. This term, on the backdrop of Czech law, will be analysed below. However, it needs to be kept in mind that the EPPO Regulation spans further. Such measures may also include procedural actions like filing a request for the extension of custody on remand. Failure to submit such a request within the legally prescribed timeframe precludes the state's right to continue remanding the accused in custody. Inaction in such circumstances – where the grounds for custody on remand still persist – would therefore be contrary to the proper conduct and maintenance of criminal proceedings (see in detail custody on remand in Art 33 EPPO Regulation, Chapter 4.2.3).
- 10 Apart from that, as mentioned, pre-trial proceedings in the Czech Republic allow for certain measures to be conducted as **urgent** [*neodkladné úkony*] or **unrepeatable acts** [*neopakovatelné úkony*]. As per s. 160(4) CCP (verbatim reproduced under Art 26 EPPO Regulation, Chapter 2.2.1, letter b)), an **urgent act** is defined as one which, due to the **risk of being thwarted**, destroyed, or the **evidence being lost**, cannot be postponed in view of the purpose of the criminal proceedings. An **unrepeatable act** is one that cannot be performed later before the court. The protocol of any urgent or unrepeatable act must specify the facts that led to its classification as such.

¹⁶⁶ EPPO 2022c, p. 1.

It is foreseeable that such acts may need to be undertaken before the EPPO decides whether to evoke a case. Examples include the interrogation of a person who may not be available for questioning at a later stage of the proceedings, or the identification of a person [*rekognice*, in German: *Gegenüberstellung*], particularly where the suspect has been detained and the statutory time limit for release is approaching. 11

In urgent situations, it is usually the Czech Police [*Policie České republiky*] who conducts various measures. More intrusive actions require the consent of the public prosecutor or the approval of the court upon the public prosecutor's request. In cases of urgency, the police, as the primary law enforcement agency, may enter premises or private residences without prior judicial authorisation. 12

These duties are generally reflected for all public prosecutors in Decree No 23/1994 Coll., on the Rules of Procedure of the Public Prosecutor's Office, the Establishment of Branches of Czech Public Prosecutor's Offices, and Details on Acts Performed by Legal Trainees [vyhláška č. 23/1994 Sb., o jednacím řádu státního zastupitelství, zřízení poboček českých státních zastupitelství a podrobnostech o úkonech prováděných právními čekateli]. According to s. 12(3) of this decree, a public prosecutor is obliged, upon the commencement of procedural actions under the CCP, to take all necessary immediate steps to prevent the obstruction or failure of the criminal proceedings. 13

3.5. Finalisation of the National Investigation (Paragraph 7)

Paragraph 7 stipulates that “the national investigation has not already been finalised and that an indictment has not been submitted to a court,” thereby setting a procedural threshold beyond which the EPPO may no longer exercise its right of evocation. While the initial stages of pre-trial proceedings – both proceedings prior to investigation and investigation *stricto sensu* – have been analysed above, it is equally necessary to address the concluding stages of these proceedings. 14

For a clearer understanding of the **stages of Czech pre-trial proceedings**, please refer to the following chapter 2.9. This chapter reproduces only selected provisions concerning the conclusion of investigations. 15

Nota bene: When reviewing the subsequent provisions, it is important to recognise that they not only establish a procedural limitation beyond which a case cannot be evoked, but **also outline how investigations are concluded in the Czech Republic** – for example, through the **filing of an indictment** under the EPPO Regulation. Although this volume focuses on pre-trial proceedings, these provisions remain relevant to the EPPO during the indictment phase. The procedural rules governing national authorities prior to the EPPO's exercise of its right of evocation (Art 27 EPPO Regulation) similarly apply in the context of EPPO indictments (Arts 34 et seq.), ensuring that a formal indictment

under national law cannot be filed before a national court once the EPPO has assumed competence.

Section 166 End of Investigation¹⁶⁷

(1) If the law enforcement agency determines that the investigation is completed and its results are sufficient to file an indictment, it shall allow the accused, their defence counsel and the injured party who filed a proposal pursuant to s. 43(3) – provided the injured party's place of residence is known – **to examine the files and suggest supplements to the investigation within a reasonable time.** The accused, their defence counsel and the injured party will be notified of this opportunity **at least three days in advance.** If the number of injured parties is very high, s. 44(2) applies similarly. The specified period may be shortened with the consent of the accused, their defence counsel and the injured party. If the law enforcement agency deems the proposed addition unnecessary, it will reject it. The law enforcement agency will record these actions in the file and will notify the accused, their defence counsel, or the injured party of the rejection of proposals to supplement the investigation. The accused, who has exercised the right referred to in s. 2(14), is also invited to indicate whether they require the translation of certain documents in accordance with s. 28(4).

(2) If the accused, their defence counsel, or the injured party do not utilise the opportunity to examine the files despite being duly informed, the law enforcement agency shall record this in the file and proceed as though this action had taken place.

(3) Upon conclusion of the investigation, the law enforcement agency shall submit to the public prosecutor a file containing a proposal to file an indictment with a list of proposed evidence and a justification for not complying with proposals to introduce additional evidence. Alternatively, it may make a proposal for certain decisions pursuant to ss. 171 to 173, s. 307, or s. 309.

¹⁶⁷ § 166 Skončení vyšetřování

(1) Uzná-li policejní orgán vyšetřování za skončené a jeho výsledky za postačující k podání obžaloby, umožní obviněnému, jeho obhájci a poškozenému, který podal návrh podle § 43 odst. 3, pokud jsou pobyt nebo sídlo tohoto poškozeného známy, v přiměřené době prostudovat spisy a učinit návrhy na doplnění vyšetřování. Na tuto možnost upozorní obviněného, jeho obhájce a poškozeného nejméně tři dny předem. Je-li počet poškozených velmi vysoký, platí obdobně § 44 odst. 2. Uvedenou lhůtu lze se souhlasem obviněného, obhájce a poškozeného zkrátit. Nepovažuje-li policejní orgán navrhované doplnění za nutné, odmítne je. O těchto úkonech učiní policejní orgán záznam ve spise a o odmítnutí návrhů na doplnění vyšetřování vyrozumí obviněného, jeho obhájce nebo poškozeného. Obviněný, který využil právo uvedené v § 2 odst. 14, se zároveň vyzve, aby se vyjádřil, zda požaduje přeložení některých písemností podle § 28 odst. 4.

(2) Nevyužijí-li obviněný, jeho obhájce nebo poškozený možnosti prostudovat spisy, ačkoliv na ni byli řádně upozorněni, učiní o tom policejní orgán záznam do spisu a postupuje dále, jako by k tomuto úkonu došlo.

(3) Po skončení vyšetřování předloží policejní orgán státnímu zástupci spis s návrhem na podání obžaloby se seznamem navrhovaných důkazů a zdůvodněním, proč nevyhověl návrhům na provedení důkazů dalších, nebo učiní návrh na některé rozhodnutí podle § 171 až 173, podle § 307 nebo podle § 309.

Section 167¹⁶⁸

(1) The **law enforcement agency is obliged to finish the investigation at the latest**

(a) **within 2 months** from the initiation of the criminal investigation, in the case of a criminal offence falling within the jurisdiction of a district court, for which the law prescribes a sentence of imprisonment with an upper limit not exceeding five years,¹⁶⁹

(b) **within 3 months** from the initiation of the criminal investigation, if it is a different matter belonging to the jurisdiction of the district court.

(2) If the investigation is not completed within the time limits specified in paragraph 1, the law enforcement agency shall **justify in writing to the public prosecutor** why it was not possible to complete the investigation within the statutory time limit, what actions still need to be carried out and for how long the investigation will continue. The public prosecutor can instruct the law enforcement agency to either change the list of actions that have yet to be carried out or to set a different time limit for the investigation to continue.

(3) In cases in which the investigation has not been completed within the time limit set in accordance with paragraph 1, the public prosecutor is obliged to carry out a review of the case at least once a month as part of supervision and, if necessary, impose an obligation on the law enforcement agency to carry out specific actions. The public prosecutor will write a record of the review.

Special Provisions on the Investigation of Certain Offences**Section 168¹⁷⁰**

(1) The provisions of this section shall apply to the investigation of offences in **respect of which proceedings are brought in the first instance by a regional court.**

¹⁶⁸ § 167

(1) Policejní orgán je povinen skončit vyšetřování nejpozději

a) do dvou měsíců od zahájení trestního stíhání, jde-li o trestný čin patřící do příslušnosti okresního soudu, na který zákon stanoví trest odnětí svobody, jehož horní hranice nepřevyšuje pět let,

b) do tří měsíců od zahájení trestního stíhání, jde-li o jinou věc patřící do příslušnosti okresního soudu.

(2) Pokud není vyšetřování ve lhůtách uvedených v odstavci 1 skončeno, policejní orgán státnímu zástupci písemně zdůvodní, proč nebylo možné v zákonem stanovené lhůtě vyšetřování skončit, jaké úkony je třeba ještě provést a po jakou dobu bude vyšetřování pokračovat. Státní zástupce může pokynem policejnímu orgánu jednak změnit výčet úkonů, které mají být ještě provedeny, jednak stanovit odlišně lhůtu, po kterou má vyšetřování ještě trvat.

(3) Ve věcech, v nichž nebylo ve lhůtě stanovené podle odstavce 1 vyšetřování skončeno, je státní zástupce povinen v rámci dozoru nejméně jednou za měsíc provést prověrku věci, a pokud je to třeba, uložit policejnímu orgánu povinnost provést konkrétní úkony. O prověře sepíše státní zástupce záznam.

¹⁶⁹ It should be noted that a change in wording is effective as of 1 January 2025. Until that day, s. 167(1)(a) stipulates that “within 2 months from the initiation of criminal investigation, if it is a matter belonging to the jurisdiction of a judge sitting alone”. See the discussion on the reduction of participation of lay judges in Part B, Chapter 2.3.

¹⁷⁰ § 168

(1) Ustanovení tohoto oddílu se užije při vyšetřování trestných činů, o nichž koná řízení v prvním stupni krajský soud.

(2) Jestliže tento oddíl neobsahuje ustanovení zvláštní, postupuje se při vyšetřování podle oddílu prvního a druhého této hlavy.

(2) If this section does not contain special provisions, the investigation shall be governed by sections one and two of this title.

Section 170¹⁷¹

(1) The law enforcement agency shall **conclude the investigation within six months of the commencement of the investigation.**

(2) If the investigation is not completed within the period referred to in paragraph 1, the law enforcement agency and the public prosecutor shall proceed in accordance with s. 167(2) and (3).

3.6. Stages of Czech Pre-Trial Proceedings

- 16** Against the backdrop of commencing an investigation or exercising the right of evocation, the two phases of pre-trial proceedings have been discussed, highlighting their significance and the necessity for the EPPO to understand them when joining the proceedings. However, as the investigation progresses, it is equally essential to have a clear grasp of the various ways in which each phase may conclude. This understanding is crucial for determining the procedural trajectory of a case, ensuring that decisions align with both national and EU legal frameworks. The overview on the next page outlines all relevant decisions that may bring verification and investigation to a close, followed by a verbatim reproduction of key legal provisions governing these outcomes.

¹⁷¹ § 170

(1) Policejní orgán je povinen skončit vyšetřování nejpozději do šesti měsíců od zahájení trestního stíhání.

(2) Není-li vyšetřování ve lhůtě uvedené v odstavci 1 skončeno, postupuje policejní orgán a státní zástupce podle § 167 odst. 2, 3.

Table 14: Decisions in Pre-trial Proceedings (conclusion of proceedings prior to investigation; conclusion of investigation)

Pre-trial proceedings [přípravné řízení]		Commission of a criminal offence
		Detection of the commission of a criminal offence by a law enforcement agency
	Proceedings prior to investigation/ verification [postup před zahájením trestního stíhání/ vyšetřování]	Commencement: Drawing up a record on the commencement of criminal proceedings (s. 158(3)) [záznam o zahájení úkonů trestního řízení]
		Conclusion: - Discontinuance of criminal proceedings [odložení věci] - Mandatory (s. 159a(1), (2) and (5)) - Facultative (s. 159a(3) and (4)) - Referral of the case to the competent authority for administrative proceedings (s. 159a(1)(a) and (b)) [odevzdání věci] - Administrative offences - Disciplinary offences - Temporary deferral of criminal investigation (s. 159b, s. 159c) [dočasné odložení trestního stíhání] - Decision not to investigate a suspect (s. 159d) [rozhodnutí o nestíhání podezřelého] - Resolution to initiate criminal investigation against the accused (s. 160) [usnesení o zahájení trestního stíhání]
	Investigation [vyšetřování]	Commencement: Resolution to initiate criminal investigation against the accused (s. 160) [usnesení o zahájení trestního stíhání]
		Conclusion: - Returning the case to the law enforcement agency for further investigation (s. 174(2)(d)) [vrácení věci policejnímu orgánu k doplnění] - Referral of the case to the competent authority (s. 171) [postoupení věci jinému orgánu] - Termination of investigation (s. 172) [zastavení trestního stíhání] - Mandatory (s. 172(1)) - Facultative (s. 172(2)) - Temporary suspension of investigation (s. 173) [přerušování trestního stíhání] - Plea agreement (s. 175a) [dohoda o vině a trestu] - Filing of an indictment (s. 176) [obžaloba] - Conditional suspension of criminal investigation (s. 307) [podmíněné zastavení trestního stíhání] - Settlement (s. 309) [narovnání] - Withdrawal from investigation of a minor (s. 70 of the Juvenile Justice Act) [odstoupení od trestního stíhání] - Decision that the suspect has not fulfilled the conditions for temporary deferral of investigation (s. 159d(1)) [rozhodnutí, že podezřelý nesplnil podmínky dočasného odložení trestního stíhání]

Source: The authors.

3.6.1. Decisions Concluding Proceedings Prior to Investigation

18 Relevant provisions on decisions concluding proceedings prior to investigation are reproduced below, with references to other provisions where necessary:

19 **Section 159a Discontinuance or Other Resolution of the Case¹⁷²**

(1) If the case does not involve suspicion of a criminal offence, the public prosecutor or law enforcement agency shall discontinue the case by a resolution, unless it is appropriate to resolve the matter in another way. Such alternative resolutions may include, in particular:

(a) referring the case to the competent authority for proceedings on an administrative offence; or

(b)¹⁷³ referring the case to another authority for disciplinary proceedings.

(2) Before the initiation of criminal investigation, the public prosecutor or law enforcement agency shall discontinue the case by a resolution if criminal investigation is inadmissible under s. 11.

(3)¹⁷⁴ Before the initiation of criminal investigation, the public prosecutor or law enforcement agency may discontinue the case by a resolution if criminal investigation would be purposeless, considering the circumstances set out in s. 172(2)(a) or (b).

(4) The public prosecutor may discontinue the case if the results of the proceedings prior to investigation indicate that the circumstances specified in s. 172(2)(c) have occurred.

(5) The public prosecutor or law enforcement agency shall also discontinue the case if it has not been possible to establish facts justifying the initiation of criminal investigation (s. 160). If the reasons for discontinuance cease to exist, criminal investigation shall be initiated.

(6) A resolution on discontinuance must be delivered to the injured party, if known. A resolution on discontinuance under paragraphs 1 to 5 must be delivered to the public

¹⁷² § 159a Odložení nebo jiné vyřízení věci

(1) Nejde-li ve věci o podezření z trestného činu, státní zástupce nebo policejní orgán věc odloží usnesením, jestliže není na místě vyřídit věc jinak. Takovým vyřízením může být zejména

a) odevzdání věci příslušnému orgánu k projednání přestupku, nebo

¹⁷³ b) odevzdání věci jinému orgánu ke kázeňskému nebo kárnému projednání.

(2) Státní zástupce nebo policejní orgán před zahájením trestního stíhání odloží usnesením věc, je-li trestní stíhání nepřijatelné podle § 11.

¹⁷⁴ (3) Státní zástupce nebo policejní orgán může před zahájením trestního stíhání usnesením odložit věc, je-li trestní stíhání neúčelné vzhledem k okolnostem uvedeným v § 172 odst. 2 písm. a) nebo b).

(4) Státní zástupce může věc odložit, jestliže z výsledků prověřování vyplývá, že nastaly okolnosti uvedené v § 172 odst. 2 písm. c).

(5) Státní zástupce nebo policejní orgán věc odloží též tehdy, pokud se nepodařilo zjistit skutečnosti opravňující zahájit trestní stíhání (§ 160). Pominou-li důvody odložení, trestní stíhání zahájí.

(6) Usnesení o odložení věci musí být doručeno poškozenému, pokud je znám. Usnesení o odložení věci podle odstavců 1 až 5 musí být doručeno do 48 hodin státnímu zástupci. Oznamovatel se o odložení věci vyrozumí, pokud o to podle § 158 odst. 2 požádal.

(7) Proti usnesení o odložení věci může poškozený uvedený v odstavci 6 podat stížnost, jež má odkladný účinek.

prosecutor within 48 hours. The reporting party shall be informed of the discontinuance if they have requested such notification under s. 158(2).

(7) The injured party referred to in paragraph 6 may file a complaint against the resolution on discontinuance, which shall have a suspensive effect.

Section 159b Temporary Deferral of Criminal Investigation¹⁷⁵

(1) If necessary for clarifying criminal activity committed for the benefit of an organised criminal group or another intentional criminal offence, or for identifying the offenders, the law enforcement agency may, with the consent of the public prosecutor, temporarily defer the initiation of criminal investigation for the necessary period, but for no more than two months.

(2) If the reasons for the temporary deferral under paragraph 1 persist, the public prosecutor may, upon the proposal of the law enforcement agency, grant approval for an extension of the period specified in paragraph 1 for up to another two months, and this extension may be granted repeatedly.

(3)¹⁷⁶ The law enforcement agency shall also temporarily defer the initiation of criminal investigation if the person concerned is temporarily exempt from the jurisdiction of criminal justice authorities (s. 10) or if their investigation is temporarily inadmissible due to the lack of consent from the competent authority.

(4) The law enforcement agency shall also temporarily defer the initiation of criminal investigation if a previous proceeding for the same act against the same person was concluded with a final decision on an administrative offence, and the time limit for initiating a review procedure under another legal provision, in which the decision on the administrative offence may be annulled, has not yet expired.

¹⁷⁵ § 159b Dočasné odložení trestního stíhání

(1) Jestliže to je třeba k objasnění trestné činnosti spáchané ve prospěch organizované zločinecké skupiny, nebo jiného úmyslného trestného činu, anebo zjištění jejich pachatelů, může policejní orgán se souhlasem státního zástupce dočasně odložit zahájení trestního stíhání na nezbytnou dobu, nejdéle však o dva měsíce.

¹⁷⁶ (2) Trvají-li důvody, pro které bylo trestní stíhání podle odstavce 1 dočasně odloženo, může státní zástupce na návrh policejního orgánu vyslovit souhlas s prodloužením lhůty uvedené v odstavci 1 nejvýše o další dva měsíce, a to i opakovaně.

(3) Policejní orgán dočasně odloží zahájení trestního stíhání osoby též v případě, kdy je tato osoba dočasně vyňata z pravomoci orgánů činných v trestním řízení (§ 10) nebo je-li její trestní stíhání pro nedostatek souhlasu oprávněného orgánu dočasně nepřipustné.

(4) Policejní orgán dočasně odloží zahájení trestního stíhání též v případě, jestliže dřívější řízení pro týž skutek proti téže osobě skončilo pravomocným rozhodnutím o přestupku a dosud neuplynula lhůta pro zahájení přezkumného řízení podle jiného právního předpisu, ve kterém může být rozhodnutí o přestupku zrušeno. Po právní moci rozhodnutí o dočasném odložení trestního stíhání podle věty první dá policejní orgán podnět příslušnému správnímu orgánu ke zrušení rozhodnutí o přestupku v přezkumném řízení.

(5) O dočasném odložení trestního stíhání policejní orgán vyhotoví záznam, jehož opis do 48 hodin zašle státnímu zástupci.

(6) Pominou-li důvody pro dočasné odložení trestního stíhání, policejní orgán trestní stíhání neprodleně zahájí.

Once the decision on temporary deferral becomes final, the law enforcement agency shall submit a proposal to the competent administrative authority to annul the decision on the administrative offence through the review procedure.

(5) The law enforcement agency shall prepare a record of the temporary deferral of the criminal investigation and send a copy to the public prosecutor within 48 hours.

(6) If the reasons for the temporary deferral of the criminal investigation cease to exist, the law enforcement agency shall immediately initiate a criminal investigation.

Section 159c Special Provisions on Temporary Deferral of Criminal Investigation¹⁷⁷

(1) The law enforcement agency shall decide on the temporary deferral of the criminal investigation of a suspect accused of the offence of scheming to defraud in insolvency proceedings (s. 226(2), (4), or (5) CC), breach of competition law (s. 248(1)(e), (3), or (4) CC), scheming to defraud in public procurement and tenders (s. 257(1)(b), (2), or (3) CC), scheming to defraud at government auction (s. 258(1)(b), (2), or (3) CC), bribery (s. 332 CC), trading in influence (s. 333(2) CC), or obstruction of justice (s. 347a(2) CC), if the suspect provided or promised a bribe, financial, or other benefit solely because they were requested to do so, voluntarily and without undue delay reported the matter to the public prosecutor or law enforcement agency, disclosed to the law enforcement agency the facts known to them regarding the criminal activities of the person who solicited the bribe, financial, or other benefit, and committed to giving a full and truthful testimony about these facts in the pre-trial proceedings as well as in court proceedings.

(2) A decision on temporary deferral of criminal investigation under paragraph 1 cannot be made if the bribe, financial, or other benefit was provided or promised in connection with the exercise of the official authority of a public official as specified in s. 334(2)(a) to (c) CC or a public official as specified in s. 334(2)(d) CC, where the public official holds a position in a business entity over which a foreign state has decisive influence.

¹⁷⁷ § 159c Zvláštní ustanovení o dočasném odložení trestního stíhání

(1) Policejní orgán rozhodne o dočasném odložení trestního stíhání podezřelého z trestného činu pletich v insolvenčním řízení podle § 226 odst. 2, 4 nebo 5 trestního zákoníku, porušení předpisů o pravidlech hospodářské soutěže podle § 248 odst. 1 písm. e), odst. 3 nebo 4 trestního zákoníku, pletich při zadání veřejné zakázky a při veřejné soutěži podle § 257 odst. 1 písm. b), odst. 2 nebo 3 trestního zákoníku, pletich při veřejné dražbě podle § 258 odst. 1 písm. b), odst. 2 nebo 3 trestního zákoníku, podplacení podle § 332 trestního zákoníku, nepřímého úplatkářství podle § 333 odst. 2 trestního zákoníku nebo maření spravedlnosti podle § 347a odst. 2 trestního zákoníku, pokud podezřelý poskytl nebo slíbil úplatek, majetkový nebo jiný prospěch jen proto, že byl o to požádán, učinil o tom dobrovolně a bez zbytečného odkladu oznámení státnímu zástupci nebo policejnímu orgánu, oznámí policejnímu orgánu skutečnosti, které jsou mu známy o trestné činnosti toho, kdo o tento úplatek, majetkový nebo jiný prospěch požádal, a zaváže se podat v přípravném řízení i v řízení před soudem úplnou a pravdivou výpověď o těchto skutečnostech.

(2) Rozhodnout o dočasném odložení trestního stíhání podle odstavce 1 nelze, byl-li úplatek, majetkový nebo jiný prospěch poskytnut nebo slíben v souvislosti s výkonem pravomoci úřední osoby uvedené v § 334 odst. 2 písm. a) až c) trestního zákoníku nebo úřední osoby uvedené v § 334 odst. 2 písm. d) trestního zákoníku, jde-li o úřední osobu zastávající funkci v podnikající právnické osobě, v níž má rozhodující vliv cizí stát.

Section 159d Decision Not to Investigate a Suspect¹⁷⁸

(1) If no additional facts emerge that would preclude a decision on the temporary suspension of the criminal investigation, and if the suspect has fulfilled their obligations under s. 159c(1), the public prosecutor shall decide that the suspect will not be investigated. Otherwise, the public prosecutor shall decide that the suspect has not met the conditions under s. 159c(1). A complaint may be filed against this resolution, which shall have a suspensive effect.

(2) A decision on the non-investigation of the suspect may only be made after the final conclusion of the criminal investigation of the person who solicited the bribe, financial, or other benefit from the suspect, provided that the time limit for filing an extraordinary appeal [*dovolání*] has expired or a decision has been made on the extraordinary appeal, and the time limit for filing a constitutional complaint has expired or a decision has been made on such a complaint. Alternatively, such a decision may be made following the final discontinuance or other resolution of the case, if criminal investigation of the person who solicited the bribe, financial, or other benefit cannot be initiated.

(3) Once the decision on non-investigation becomes legally binding, the public prosecutor shall immediately forward it to the Supreme Prosecutor's Office; this does not apply if the decision was issued by a European Delegated Prosecutor or a European Prosecutor.

(4) Once the decision on non-fulfilment of conditions under s. 159c(1) becomes legally binding, the law enforcement agency shall immediately initiate a criminal investigation.

Section 160 See above Art 26 EPPO Regulation, Chapter 2.2.1, letter b).

3.6.2. Decisions Concluding Investigation

Relevant provisions on decisions concluding investigation are reproduced below, with references to other provisions where necessary. Due to the nature of EPPO crimes, decisions on withdrawal from investigation of a minor are not discussed.

20

¹⁷⁸ § 159d Rozhodnutí o nestíhání podezřelého

(1) Nejistí-li se dodatečně skutečnosti, které vylučují rozhodnout o dočasném odložení trestního stíhání a splnil-li podezřelý své závazky podle § 159c odst. 1, státní zástupce rozhodne, že nebude stíhán, jinak rozhodne, že podezřelý nesplnil podmínky podle § 159c odst. 1. Proti tomuto usnesení je přípustná stížnost, která má odkladný účinek.

21

Section 171 Referral of the Case to the Competent Authority¹⁷⁹

(1) The public prosecutor shall refer the matter to the competent authority if the outcome of the pre-trial proceedings indicates that the matter does not constitute a criminal offence but could be classified as an administrative or disciplinary misconduct within the jurisdiction of another authority.

(2) The accused and, if known, the injured party may file a complaint against the decision under paragraph 1. Such a complaint shall have a suspensive effect.

Section 172 Termination of Investigation¹⁸⁰

(1) The public prosecutor **terminates** the criminal investigation in the following cases:

- (a) where there is no doubt that the act under investigation did not occur;
- (b) where the act does not constitute a criminal offence and there is no basis for referring the case;
- (c) where it has not been proven that the accused committed the act;
- (d) where the criminal investigation is inadmissible (see s. 11);
- (e) where the accused was not criminally responsible at the time of the offence due to mental incapacity; or

¹⁷⁹ § 171 Postoupení věci jinému orgánu

(1) Státní zástupce postoupí věc jinému orgánu, jestliže výsledky přípravného řízení ukazují, že nejde o trestný čin, že však jde o skutek, který by mohl být jiným příslušným orgánem posouzen jako přestupek nebo kárné provinění.

(2) Proti usnesení podle odstavce 1 může obviněný, a je-li znám, též poškozený, podat stížnost, jež má odkladný účinek.

¹⁸⁰ § 172 Zastavení trestního stíhání

(1) Státní zástupce zastaví trestní stíhání,

- a) je-li nepochybné, že se nestal skutek, pro který se trestní stíhání vede,
- b) není-li tento skutek trestným činem a není důvod k postoupení věci,
- c) není-li prokázáno, že skutek spáchal obviněný,
- d) je-li trestní stíhání nepřijatelné (§ 11),
- e) nebyl-li obviněný v době činu pro nepřičetnost trestně odpovědný, nebo
- f) zanikla-li trestnost činu.

(2) Státní zástupce může zastavit trestní stíhání,

- a) je-li trest, k němuž může trestní stíhání vést, zcela bez významu vedle trestu, který pro jiný čin byl obviněnému již uložen nebo který ho podle očekávání postihne,
- b) bylo-li o skutku obviněného již rozhodnuto jiným orgánem, kázeňsky, kárně anebo cizozemským soudem nebo úřadem anebo mezinárodním trestním soudem, mezinárodním trestním tribunálem, popřípadě obdobným mezinárodním soudním orgánem s působností v trestních věcech, i když nesplňují některou z podmínek uvedených v § 145 odst. 1 písm. a) zákona o mezinárodní justiční spolupráci ve věcech trestních, a toto rozhodnutí lze považovat za postačující, nebo
- c) jestliže vzhledem k významu a míře porušení nebo ohrožení chráněného zájmu, který byl dotčen, způsobu provedení činu a jeho následku, nebo okolnostem, za nichž byl čin spáchán, a vzhledem k chování obviněného po spáchání činu, zejména k jeho snaze nahradit škodu nebo odstranit jiné škodlivé následky činu, je zřejmé, že účelu trestního řízení bylo dosaženo.

(3) Proti usnesení podle odstavců 1 a 2 může obviněný, a je-li znám, též poškozený, podat stížnost, jež má odkladný účinek.

(4) V trestním stíhání, které bylo zastaveno z některého důvodu uvedeného v odstavci 2, se pokračuje, prohlásí-li obviněný do tří dnů od doby, kdy mu bylo usnesení o zastavení trestního stíhání oznámeno, že na projednání věci trvá. O tom je třeba obviněného poučit.

- (f) where the criminal liability for the offence has ceased.
- (2) The public prosecutor **may terminate** the criminal investigation in the following circumstances:
- (a) where any potential penalties resulting from the investigation would be entirely irrelevant in comparison with a penalty already imposed on the accused for another offence, or one that is expected to be imposed;
 - (b) where the act of the accused has already been adjudicated by another authority, such as a disciplinary authority, a foreign court or authority, an international criminal court, tribunal, or similar judicial authority with jurisdiction in criminal matters, even if it does not meet the criteria stipulated in s. 145(1)(a) of the Act on International Judicial Cooperation in Criminal Matters and where this decision may be considered sufficient, or
 - (c) where, given the nature and gravity of the violation or threat to the protected interest, the manner in which the act was committed, its consequences, the circumstances surrounding the act and the conduct of the accused after the act, including efforts to provide compensation or mitigate harm, it is clear that the objectives of criminal proceedings have been fulfilled.
- (3) The accused, and if known, the injured party, may file a complaint against the resolution made under paragraphs 1 and 2. Such a complaint shall have suspensive effect.
- (4) A criminal investigation that has been terminated for one of the reasons listed under paragraph 2 may be resumed if the accused, within three days of being notified of the discontinuance, declares that they wish the case to proceed. The accused must be informed of this right.

Section 173 Temporary Suspension of Investigation¹⁸¹

- (1) The public prosecutor shall temporarily suspend the criminal investigation in the following situations:
- (a) if the case cannot be properly investigated due to the absence of the accused;

¹⁸¹ § 173 Přerušení trestního stíhání

- (1) Státní zástupce přeruší trestní stíhání,
- a) nelze-li pro nepřítomnost obviněného věc náležitě objasnit,
 - b) nelze-li obviněného pro těžkou chorobu postavit před soud,
 - c) není-li obviněný pro duševní chorobu, která nastala až po spáchání činu, schopen chápat smysl trestního stíhání,
 - d) je-li obviněný dočasně vyňat z pravomoci orgánů činných v trestním řízení (§ 10) nebo je-li jeho trestní stíhání pro nedostatek souhlasu oprávněného orgánu dočasně nepřipustné,
 - e) jestliže dřívější řízení pro týž skutek proti téže osobě skončilo pravomocným rozhodnutím o přestupku a dosud neuplynula lhůta pro zahájení přezkumného řízení podle jiného právního předpisu, ve kterém může být rozhodnutí o přestupku zrušeno,
 - f) byl-li obviněný vydán do ciziny nebo vyhoštěn.
- (2) Před rozhodnutím o přerušení trestního stíhání je nutno učinit vše, čeho je třeba k zabezpečení úspěšného provedení trestního stíhání. Zajištění věcí důležitých pro trestní řízení trvá i během přerušování trestního stíhání. Pomine-li důvod přerušování, státní zástupce rozhodne, že se v trestním stíhání pokračuje.
- (3) Po právní moci rozhodnutí o přerušování trestního stíhání podle odstavce 1 písm. e) podá státní zástupce podnět příslušnému správnímu orgánu ke zrušení rozhodnutí o přestupku v přezkumném řízení.
- (4) O přerušování trestního stíhání je třeba vyznat poškozeného.

- (b) if the accused is unable to appear in court due to a serious illness;
 - (c) if the accused cannot comprehend the nature of the criminal investigation owing to a mental illness that developed after the commission of the crime;
 - (d) if the accused is temporarily exempt from the jurisdiction of the criminal authorities (see s. 10), or if the investigation is temporarily inadmissible due to the absence of required consent from the competent authority;
 - (e) if previous proceedings regarding the same offence against the same person concluded with a final decision on an administrative offence, and the statutory period for initiating review proceedings to annul that decision has not yet expired; or
 - (f) if the accused has been extradited or deported to another country.
- (2) Prior to deciding on the temporary suspension of investigation, all necessary measures should be taken to ensure the successful continuation of the investigation. The safeguarding of evidence relevant to the proceedings shall continue during the suspension period. If the reason for temporary suspension ceases to exist, the public prosecutor shall order the resumption of the investigation.
- (3) Once the decision to temporarily suspend investigation under paragraph 1(e) has been finalised, the public prosecutor shall initiate proceedings before the competent administrative authority to annul the decision concerning the offence through the review procedure.
- (4) The injured party shall be notified of the temporary suspension of investigation.

Section 173a Notification to the Supreme Prosecutor's Office¹⁸²

The public prosecutor shall notify the Supreme Prosecutor's Office of the resolution to terminate investigation and transfer the case without delay upon the resolution attaining legal effect. This requirement does not apply to resolutions issued by a European Delegated Prosecutor or a European Prosecutor.

Section 176¹⁸³

- (1) If the results of the investigation sufficiently justify bringing the accused before the court, the public prosecutor files the indictment and attaches the files and their annexes

¹⁸² § 173a Doručení usnesení Nejvyššímu státnímu zastupitelství

Usnesení o zastavení trestního stíhání a o postoupení věci doručí státní zástupce bezodkladně po právní moci Nejvyššímu státnímu zastupitelství; to neplatí, jde-li o usnesení vydané evropským pověřeným žalobcem nebo evropským žalobcem.

¹⁸³ § 176

(1) Jestliže výsledky vyšetřování dostatečně odůvodňují postavení obviněného před soud, státní zástupce podá obžalobu a připojí k ní spisy a jejich přílohy. O podání obžaloby vyrozumí obviněného, obhájce a poškozeného, pokud jsou jeho pobyt nebo sídlo známy, a je-li obviněný advokátem též ministra spravedlnosti a předsedu Komory.

(2) Obžaloba může být podána jen pro skutek, pro který bylo zahájeno trestní stíhání (§ 160). Míni-li státní zástupce tento skutek posuzovat jako jiný trestný čin, než jak ho posuzoval policejní orgán, upozorní na to před podáním obžaloby obviněného a jeho obhájce a zjistí, zda navrhuje se zřetelem na zamýšlenou změnu vyšetřování doplnit.

to it. The prosecutor shall notify the accused, their defence counsel and the injured party of the filing of the indictment, if their place of residence or seat is known. If the accused is a counsel, the public prosecutor shall also notify the Minister of Justice and the President of the Czech Bar Association.

(2) An indictment may be filed only for an act for which criminal investigation has been initiated (s. 160). If the public prosecutor intends to assess this act as a different offence than the one assessed by the law enforcement agency, the prosecutor will inform the accused and their defence counsel about this before filing the indictment and ascertain whether they propose to supplement the investigation in light of the intended change.

Section 175a¹⁸⁴

(1) If the results of the investigation sufficiently establish that the act occurred, that it constitutes a criminal offence, and that it was committed by the accused, the public prosecutor may initiate negotiations on a plea agreement, either at the request of the accused or of their own accord. If the public prosecutor finds the accused's request unfounded, they shall inform the accused accordingly, and if the accused has legal counsel, their counsel shall also be notified.

(2) The public prosecutor shall summon the accused for negotiations on the plea agreement; the accused's defence counsel and the injured party – unless they have expressly waived their procedural rights – shall be notified of the date and venue of the negotiation. The injured party shall also be informed of their right to claim, no later than at the first plea agreement negotiation, compensation for damages or non-pecuniary harm caused by the offence, or the restitution of unjust enrichment gained at their expense. If

¹⁸⁴ § 175a

(1) Jestliže výsledky vyšetřování dostatečně prokazují závěr, že se skutek stal, že tento skutek je trestným činem a že jej spáchal obviněný, může státní zástupce zahájit jednání o dohodě o vině a trestu na návrh obviněného nebo i bez takového návrhu. Neshledá-li státní zástupce návrh obviněného důvodným, vyrozumí o svém stanovisku obviněného, a má-li obviněný obhájce, též jeho.

(2) K jednání o dohodě o vině a trestu státní zástupce předvolá obviněného; o době a místě jednání vyrozumí obhájce obviněného a poškozeného, který výslovně neprohlásil, že se vzdává procesních práv, které mu zákon jako poškozenému přiznává. Poškozeného zároveň upozorní na možnost uplatnit nejpozději při prvním jednání o dohodě o vině a trestu nárok na náhradu škody nebo nemajetkové újmy v penězích, jež mu byla trestným činem způsobena, nebo na vydání bezdůvodného obohacení, které bylo na jeho úkor získáno. Poškozeného, který má postavení oběti podle zákona o obětech trestných činů, zároveň upozorní na možnost učinit prohlášení o tom, jaký dopad měl spáchaný trestný čin na jeho dosavadní život.

(3) Podmínkou sjednání dohody o vině a trestu je prohlášení obviněného, že spáchal skutek, pro který je stíhán, pokud na základě dosud opatřených důkazů a dalších výsledků přípravného řízení nejsou důvodné pochybnosti o pravdivosti jeho prohlášení. Dohodu o vině a trestu sjednává státní zástupce s obviněným; jde-li o případ nutné obhajoby, sjednává státní zástupce dohodu o vině a trestu s obviněným za přítomnosti obhájce.

(4) Má-li státní zástupce za to, že jsou splněny zákonné podmínky pro uložení ochranného opatření, upozorní obviněného na možnost postupu podle § 178 odst. 2 i v případě, že dojde k sjednání dohody o vině a trestu, ve které nebude ochranné opatření dohodnuto. Bez tohoto upozornění může postupovat podle § 178 odst. 2 jen, pokud důvody pro uložení ochranného opatření vyšly najevo až po podání návrhu na schválení dohody o vině a trestu soudu.

the injured party qualifies as a victim under the Victims of Crime Act,¹⁸⁵ they shall also be advised of their right to make a statement about the impact of the crime on their life.

(3) A condition for concluding the plea agreement is the accused's declaration that they committed the act for which they are being prosecuted, provided that, based on the evidence obtained and the results of the pre-trial proceedings, there are no reasonable doubts about the truthfulness of their declaration. The plea agreement is concluded between the public prosecutor and the accused; in cases requiring mandatory defence, the public prosecutor negotiates the plea agreement with the accused in the presence of their defence counsel.

(4) If the public prosecutor believes that the statutory conditions for imposing a protective measure are met, they shall inform the accused of the possibility of proceeding under s. 178(2), even if a plea agreement is concluded that does not include a protective measure. Without such notice, the prosecutor may proceed under s. 178(2) only if the grounds for imposing a protective measure emerge after the submission of the plea agreement for court approval.

(5)¹⁸⁶ In negotiating the plea agreement, the public prosecutor shall also consider the interests of the injured party. If the injured party is present at the negotiations, they may

¹⁸⁵ Victims of Crimes Act [zákon č. 45/2013 Sb., o obětech trestných činů].

¹⁸⁶ (5) Státní zástupce při sjednávání dohody o vině a trestu dbá také na zájmy poškozeného. Je-li poškozený sjednávání dohody o vině a trestu přítomen, vyjádří se zejména k rozsahu a způsobu náhrady škody nebo nemajetkové újmy nebo vydání bezdůvodného obohacení. Má-li poškozený, který je přítomen sjednávání dohody o vině a trestu, postavení oběti podle zákona o obětech trestných činů, státní zástupce mu umožní učinit prohlášení o tom, jaký dopad měl spáchaný trestný čin na jeho dosavadní život, a to i v případě, že prohlášení učinil písemně. Dohodu o vině a trestu lze sjednat i bez přítomnosti poškozeného, nedostaví-li se k jednání, ačkoli o něm byl řádně vyrozuměn, nebo nedostaví-li se k jednání a nárok na náhradu škody nebo nemajetkové újmy nebo na vydání bezdůvodného obohacení již uplatnil nebo prohlásil, že jej uplatňovat nebude. Uplatnil-li poškozený, který není jednání přítomen, nárok na náhradu škody nebo nemajetkové újmy nebo na vydání bezdůvodného obohacení, může se státní zástupce za poškozeného dohodnout s obviněným o rozsahu a způsobu náhrady škody nebo nemajetkové újmy nebo vydání bezdůvodného obohacení až do výše uplatněného nároku.

(6) Dohoda o vině a trestu obsahuje

a) označení státního zástupce, obviněného a poškozeného, byl-li přítomen sjednávání dohody o vině a trestu a souhlasí-li s rozsahem a způsobem náhrady škody nebo nemajetkové újmy nebo vydání bezdůvodného obohacení,

b) datum a místo jejího sepsání,

c) popis skutku, pro který je obviněný stíhán, s uvedením místa, času a způsobu jeho spáchání, případně jiných okolností, za nichž k němu došlo, tak, aby nemohl být zaměněn s jiným skutkem,

d) označení trestného činu, který je v tomto skutku spatřován, a to jeho zákonným pojmenováním, uvedením příslušného ustanovení zákona a všech zákonných znaků včetně těch, které odůvodňují určitou trestní sazbu,

e) prohlášení obviněného, že spáchal skutek, pro který je stíhán a který je předmětem sjednané dohody o vině a trestu,

f) v souladu s trestním zákoníkem dohodnutý druh, výměru a způsob výkonu trestu včetně délky zkušební doby, případně upuštění od potrestání, a rozsah přiměřených omezení a povinností v případě, že to trestní zákoník umožňuje a že byly dohodnuty; při dohodě o druhu a výměře trestu se přihlédne i k tomu, zda obviněný trestným činem získal nebo se snažil získat majetkový prospěch (§ 39 odst. 8 trestního zákoníku),

g) rozsah a způsob náhrady škody nebo nemajetkové újmy nebo vydání bezdůvodného obohacení, bylo-li dohodnuto,

h) ochranné opatření, přichází-li v úvahu jeho uložení a bylo-li dohodnuto,

i) vyjádření poškozeného k dohodě, byl-li přítomen sjednávání dohody o vině a trestu a učinil-li jej,

express their views on the scope and method of compensation for damages, non-pecuniary harm, or restitution of unjust enrichment. If the injured party, who is present, qualifies as a victim under the Victims of Crime Act, the public prosecutor shall allow them to make a statement about the impact of the crime on their life, even if they have already submitted such a statement in writing. A plea agreement may be concluded even without the presence of the injured party if they fail to appear despite being properly notified or if they have already claimed compensation, restitution, or declared that they will not make such a claim. If an absent injured party has claimed compensation or restitution, the public prosecutor may agree with the accused on the extent and method of compensation or restitution up to the claimed amount.

(6) The plea agreement shall include:

- (a) the identification of the public prosecutor, the accused, and the injured party, if present at the negotiations and if they consent to the agreed compensation, restitution, or indemnification for non-pecuniary damage;
- (b) the date and place of its conclusion;
- (c) a description of the act for which the accused is being prosecuted, including details of the location, time, and manner of its commission, and any other circumstances necessary to distinguish it from other acts;
- (d) the legal classification of the offence, including its statutory designation, the applicable legal provision, and all elements justifying the corresponding penalty;
- (e) the accused's declaration that they committed the act for which they are prosecuted and which is the subject of the plea agreement;
- (f) the type, extent, and manner of the agreed penalty in accordance with the Criminal Code, including probation periods and any other obligations, if applicable, as well as considerations regarding whether the accused obtained or sought to obtain financial gain from the crime (s. 39(8) CC);
- (g) the extent and manner of compensation for damages, non-pecuniary harm, or restitution of unjust enrichment, if agreed;
- (h) any protective measure to be imposed, if applicable and agreed upon;
- (i) the injured party's statement on the agreement, if they were present at the negotiations and provided one;
- (j) the signatures of the public prosecutor and the accused, as well as the signatures of defence counsel (if present) and the injured party (if present and in agreement with the compensation, restitution, or indemnification).

j) podpis státního zástupce a obviněného, dále podpis obhájce, byl-li přítomen sjednávání dohody o vině a trestu, a podpis poškozeného, byl-li přítomen sjednávání dohody o vině a trestu a souhlasí-li s rozsahem a způsobem náhrady škody nebo nemajetkové újmy nebo vydání bezdůvodného obohacení.

(7)¹⁸⁷ If a plea agreement is concluded, the public prosecutor shall provide copies to the accused, their defence counsel, and any injured party who has duly and timely claimed compensation (s. 43(3)). If no plea agreement is reached, the public prosecutor shall record this in the official case file; in such a case, any prior admission of guilt by the accused shall not be considered in subsequent proceedings.

(8) A plea agreement cannot be concluded in proceedings against a fugitive.

Section 175b¹⁸⁸

(1) If a plea agreement has been concluded, the public prosecutor shall submit an application to the court for its approval within the scope thereof. If no agreement has been reached regarding compensation for damages, non-pecuniary harm, or restitution of unjust enrichment, the public prosecutor shall inform the court of this in the submission.

(2) The public prosecutor shall attach the concluded plea agreement and any other relevant documents necessary for the judicial proceedings and decision-making.

Section 307¹⁸⁹ (and in detail 308–309 CCP)

(1) In proceedings concerning a misdemeanour, the court may, with the accused's consent, and in pre-trial proceedings, the public prosecutor may conditionally suspend criminal investigation if:

(a) the accused has confessed to the act;

(b) the accused has compensated for the damage caused by the act, has reached an agreement with the injured party on compensation, or has taken other necessary measures to compensate for the damage;

¹⁸⁷ (7) Dojde-li ke sjednání dohody o vině a trestu, státní zástupce její opis doručí obviněnému, jeho obhájci a poškozenému, který uplatnil řádně a včas své nároky (§ 43 odst. 3). Nedojde-li k dohodě o vině a trestu, provede o tom státní zástupce záznam do protokolu; v takovém případě se k prohlášení viny učiněnému obviněným v dalším řízení nepřihlíží.

(8) Dohodu o vině a trestu nelze sjednat v řízení proti uprchlému.

¹⁸⁸ § 175b

(1) Došlo-li k sjednání dohody o vině a trestu, státní zástupce podá soudu v rozsahu sjednané dohody návrh na schválení dohody o vině a trestu. Nedošlo-li k dohodě o náhradě škody nebo nemajetkové újmy nebo o vydání bezdůvodného obohacení, státní zástupce na tuto skutečnost v návrhu na schválení dohody o vině a trestu soud upozorní.

(2) K návrhu připojí státní zástupce sjednanou dohodu o vině a trestu a další písemnosti, které mají význam pro soudní řízení a rozhodnutí.

¹⁸⁹ § 307

(1) V řízení o přečinu může se souhlasem obviněného soud a v přípravném řízení státní zástupce podmíněně zastavit trestní stíhání, jestliže

a) obviněný se k činu doznal,

b) nahradil škodu, pokud byla činem způsobena, nebo s poškozeným o její náhradu uzavřel dohodu, anebo učinil jiná potřebná opatření k její náhradě,

c) vydal bezdůvodné obohacení činem získané, nebo s poškozeným o jeho vydání uzavřel dohodu, anebo učinil jiná vhodná opatření k jeho vydání,

a vzhledem k osobě obviněného, s přihlédnutím k jeho dosavadnímu životu a k okolnostem případu lze důvodně takové rozhodnutí považovat za dostačující.

(c) the accused has surrendered unjust enrichment obtained through the act, has reached an agreement with the injured party regarding its surrender, or has taken other appropriate measures to return it;

and if, considering the accused's personal circumstances, past conduct, and the circumstances of the case, such a decision can reasonably be deemed sufficient.

(2)¹⁹⁰ If justified by the nature and gravity of the committed misdemeanour, the circumstances of its commission, or the accused's personal situation, the court and, in pre-trial proceedings, the public prosecutor shall decide on the conditional suspension of criminal investigation only if the accused meets the conditions set out in paragraph 1 and:

(a) undertakes to refrain during the probationary period from a specific activity, which may include owning, keeping, or caring for animals if the offence was committed in connection with such activity; or

(b) deposits a sum of money into the court's account, and in pre-trial proceedings, into the account of the public prosecutor's office, intended as financial assistance to victims of crime under special legal provisions, provided that the amount is not manifestly disproportionate to the gravity of the misdemeanour;

and if, considering the accused's personal circumstances, past conduct, and the circumstances of the case, such a decision can reasonably be deemed sufficient.

(3) If the accused has previously consented to the conditional suspension of the submission of an application for a penalty, such consent shall also be deemed consent to the conditional suspension of criminal investigation.

(4) The decision on conditional suspension of criminal investigation shall specify a probationary period ranging from six months to two years, or in the case of a decision under paragraph 2, from six months to five years. The probationary period begins upon the legal effect of the decision. The probationary period may be longer than the period for which the accused undertook to refrain from a specific activity under paragraph 2(a).

¹⁹⁰ (2) Je-li to odůvodněno povahou a závažností spáchaného přečinu, okolnostmi jeho spáchání anebo poměry obviněného, soud a v přípravném řízení státní zástupce rozhodne o podmíněném zastavení trestního stíhání pouze tehdy, pokud obviněný splní podmínky uvedené v odstavci 1 a

a) zaváže se, že se během zkušební doby zdrží určité činnosti, která může spočívat i v držení a chovu zvířat a péči o ně, pokud se v souvislosti s ní dopustil přečinu, nebo

b) složí na účet soudu a v přípravném řízení na účet státního zastupitelství peněžitou částku určenou státní peněžitou pomocí obětem trestné činnosti podle zvláštního právního předpisu, a tato částka není zřejmě nepřiměřená závažnosti přečinu,

a vzhledem k osobě obviněného, s přihlédnutím k jeho dosavadnímu životu a k okolnostem případu lze důvodně takové rozhodnutí považovat za dostačující.

(3) Jestliže obviněný již udělil souhlas s podmíněným odložením podání návrhu na potrestání, považuje se tento souhlas i za souhlas obviněného s podmíněným zastavením trestního stíhání.

(4) V rozhodnutí o podmíněném zastavení trestního stíhání se stanoví zkušební doba na šest měsíců až dva roky, v případě rozhodnutí podle odstavce 2 na šest měsíců až pět let; zkušební doba počíná běžet právní mocí tohoto rozhodnutí. Zkušební doba může být stanovena delší, než je doba, po kterou se obviněný zavázal zdržet se určité činnosti podle odstavce 2 písm. a).

(5)¹⁹¹ The period during which the accused was prohibited from engaging in a specific activity under paragraph 2(a) before the legal effect of the decision on conditional suspension of criminal investigation shall be included in the probationary period if such prohibition resulted from another legal provision, a judicial decision, or an administrative measure.

(6) If the accused has reached an agreement with the injured party on compensation for damage or the restitution of unjust enrichment, the decision on conditional suspension of criminal investigation shall require them to fulfil their obligation during the probationary period.

(7) A decision on conditional suspension of criminal investigation under paragraph 2(a) must specify the activity the accused undertakes to refrain from and the duration of this obligation. A decision under paragraph 2(b) must specify the amount of money to be deposited for victim assistance. If the accused undertakes to refrain from driving motor vehicles, they must be informed of their obligation to surrender their driving licence under a special legal provision and that, upon the legal effect of the decision, they shall lose their driving privileges.

(8)¹⁹² The accused may also be required to comply with reasonable restrictions and obligations during the probationary period to ensure they lead a law-abiding life. The court and, in pre-trial proceedings, the public prosecutor may also impose supervision over the accused, applying the provisions of ss. 49 to 51 CC accordingly. If the accused is near the age of a minor, the court and the public prosecutor may, to take advantage of

¹⁹¹ (5) Do doby, po kterou se obviněný zavázal zdržet se určité činnosti podle odstavce 2 písm. a), se započítává doba, po kterou mu bylo před právní mocí rozhodnutí o podmíněném zastavení trestního stíhání oprávnění k činnosti, která je předmětem závazku, v souvislosti s přečinem odňato podle jiného právního předpisu nebo na základě rozhodnutí nebo opatření orgánu veřejné moci nesměl již tuto činnost vykonávat.

(6) Obviněnému, který uzavřel s poškozeným dohodu o způsobu náhrady škody nebo dohodu o vydání bezdůvodného obohacení, se v rozhodnutí o podmíněném zastavení trestního stíhání uloží, aby škodu v průběhu zkušební doby nahradil nebo aby v této době bezdůvodné obohacení vydal.

(7) Rozhodnutí o podmíněném zastavení trestního stíhání podle odstavce 2 písm. a) musí obsahovat též určení činnosti, které se obviněný během zkušební doby zavazuje zdržet, a dobu trvání tohoto závazku; rozhodnutí o podmíněném zastavení trestního stíhání podle odstavce 2 písm. b) též výši peněžité částky určené státu na peněžitou pomoc obětem trestné činnosti. Jestliže se obviněný zaváže zdržet se během zkušební doby podmíněného zastavení trestního stíhání řízení motorových vozidel, musí být poučen o povinnosti odevzdat řidičský průkaz podle zvláštního právního předpisu a o tom, že právní mocí rozhodnutí o podmíněném zastavení trestního stíhání pozbude řidičského oprávnění.

¹⁹² (8) Obviněnému lze též uložit, aby ve zkušební době dodržoval přiměřená omezení a povinnosti směřující k tomu, aby vedl řádný život. Soud a v přípravném řízení státní zástupce může též stanovit nad obviněným dohled; na výkon dohledu se použijí obdobně § 49 až 51 trestního zákoníku. Jde-li o obviněného ve věku blízkém věku mladistvých, může soud a v přípravném řízení státní zástupce v zájmu využití výchovného působení rodiny, školy a dalších subjektů uložit, a to samostatně nebo vedle přiměřených omezení a přiměřených povinností, též některá z výchovných opatření uvedených v zákoně o soudnictví ve věcech mládeže za obdobného užití podmínek stanovených pro mladistvé; zaváže-li se obviněný, že se během zkušební doby zdrží řízení motorových vozidel, lze mu též uložit povinnost podrobit se terapeutickému programu pro řidiče.

(9) Proti rozhodnutí o podmíněném zastavení trestního stíhání může obviněný a poškozený podat stížnost, jež má odkladný účinek. Rozhodne-li o podmíněném zastavení trestního stíhání soud, má toto právo též státní zástupce.

the educational influence of the family, school, and other institutions, impose educational measures under the Juvenile Justice Act, under conditions similar to those for juveniles. If the accused undertakes to refrain from driving, they may also be required to participate in a therapeutic programme for drivers.

(9) The accused and the injured party may file a complaint against the decision on conditional suspension of criminal investigation, which shall have a suspensive effect. If the decision was made by the court, the public prosecutor shall also have the right to file such a complaint.

Section 309¹⁹³

(1) In proceedings concerning a misdemeanour, the court may, with the consent of both the accused and the injured party, and in pre-trial proceedings, the public prosecutor may decide to approve a settlement and terminate the criminal investigation if the accused:

(a) declares that they committed the act for which they are investigated, and there are no reasonable doubts that this declaration was made freely, seriously, and unequivocally;

(b) compensates the injured party for the damage caused by the misdemeanour or takes the necessary actions to compensate for it, or otherwise remedies the harm caused by the misdemeanour;

(c) surrenders the unjust enrichment obtained through the misdemeanour or takes other appropriate measures to return it, and

(d) deposits a sum of money into the court's account or, in pre-trial proceedings, into the public prosecutor's office account, designated for financial assistance to victims of crime under a special legal provision, provided that the amount is not manifestly disproportionate to the gravity of the misdemeanour;

and if such a resolution of the case is deemed sufficient, considering the nature and seriousness of the offence, the extent to which the misdemeanour affected the public interest, as well as the accused's personal and financial circumstances.

¹⁹³ § 309

(1) V řízení o přečinu může se souhlasem obviněného a poškozeného soud a v přípravném řízení státní zástupce rozhodnout o schválení narovnání a zastavit trestní stíhání, jestliže obviněný

a) prohlásí, že spáchal skutek, pro který je stíhán, a nejsou důvodné pochybnosti o tom, že jeho prohlášení bylo učiněno svobodně, vážně a určitě,

b) uhradí poškozenému škodu způsobenou přečinem nebo učiní potřebné úkony k její úhradě, případně jinak odčiní újmu vzniklou přečinem,

c) vydá bezdůvodné obohacení získané přečinem nebo učiní jiná vhodná opatření k jeho vydání, a

d) složí na účet soudu nebo v přípravném řízení na účet státního zastupitelství peněžitou částku určenou státu na peněžitou pomoc obětem trestné činnosti podle zvláštního právního předpisu, a tato částka není zřejmě nepřiměřená závažnosti přečinu,

a považuje-li takový způsob vyřízení věci za dostačující vzhledem k povaze a závažnosti spáchaného činu, k míře, jakou byl přečinem dotčen veřejný zájem, k osobě obviněného a jeho osobním a majetkovým poměrům.

(2) Proti rozhodnutí podle odstavce 1 může obviněný, poškozený a v řízení před soudem i státní zástupce podat stížnost, jež má odkladný účinek.

Art 27 EPPO Regulation

(2) The accused, the injured party, and in court proceedings, also the public prosecutor, may file a complaint against the decision under paragraph 1, which shall have a suspensive effect.

4. Article 28 Conducting the Investigation

4.1. Introductory Remarks	172
4.2. Handling EDP Conducting Investigative Measures (Para 1).....	173
4.3. Notification to National Authorities (Para 4).....	173
4.4. Purpose of Pre-Trial Proceedings and the Role of EDPs.....	174
4.5. Investigative Assignments to National Authorities	178
4.6. Urgent Measures by National Authorities for Securing Investigations	180

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.

4.1. Introductory Remarks

- 1 In her address marking the first anniversary of the EPPO, delivered at the conference “EPPO One Year in Action – Towards Resolving Complexity and Bringing Added Value”¹⁹⁴ in the Hemicycle, Luxembourg, on 1 June 2022, Laura Kövesi emphasised that, in order to improve the detection rate of EU fraud, specialised customs units and financial experts, as well as teams of EU investigators trained in the typologies of EU frauds, are essential. She noted that these specialised units could be established immediately, contingent solely on political will.¹⁹⁵
- 2 Czech criminal proceedings **operate under a unified system of public prosecution**, without specialised prosecutorial offices dedicated to white-collar crime, such as Austria’s Central Public Prosecutor’s Office for the Prosecution of Economic Crimes and Corruption [*Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption*] or the recently abolished Slovakia’s Office of the Special Prosecutor [*Úrad špeciálnej prokuratúry*].¹⁹⁶ Variability within Czech system is limited to internal specialisations of individuals, while law enforcement agencies tend to exhibit a greater degree of functional specialisation. Since detection rates depend heavily on the conduct of investigations and cooperation with national authorities, the reference in Art 28 EPPO Regulation to “those national authorities” warrants closer examination. Before proceeding, the reader is advised to consult Part A II. 2., which provides an introduction to the institutions and authorities relevant to Czech criminal proceedings and their structure.

¹⁹⁴ Organised by the University of Luxembourg (Prof Katalin Ligeti), ECLAN and the EPPO.

¹⁹⁵ EPPO 2022b; Kövesi L, “So kommt die EU im Kampf gegen die Kriminalität in die Offensive”. *Die Welt*, 5 July 2022. Available at: <https://www.welt.de/debatte/kommentare/article239196661/So-kommt-die-EU-im-Kampf-gegen-die-Kriminalitaet-in-die-Offensive.html>. Accessed 31 March 2025. She stated: “Ich fordere deshalb alle zuständigen nationalen Behörden auf, diese bewährte Praxis zu übernehmen und zur Unterstützung unserer Ermittlungen spezialisierte Einheiten einzurichten, die Finanz-, Steuer- und Zollfahnder vereinen. Ich schlage vor, dass wir eine Elitetruppe hoch qualifizierter Finanzbetrugsermittler innerhalb der EU bilden, die über die EPPO länderübergreifend arbeitet. Dafür muss man kein Gesetz ändern; es ist eine reine Organisationsentscheidung der zuständigen nationalen Behörden. Es kann schon morgen geschehen”. These statements were republished by various newspapers and journals across Europe (see, for example, the *Le Figaro* article in the French volume).

¹⁹⁶ For an overview of individual participants in Austrian criminal proceedings, see Mayer-Koukol and Rebisant 2024, pp. 1007–1015. Slovakia’s Office of the Special Prosecutor [*Úrad špeciálnej prokuratúry*] had a broader mandate extending beyond white-collar crime, including jurisdiction over terrorist offences.

The specifics relevant for Art 28 EPPO Regulation will be analysed below, with particular attention to the **role of the public prosecutor and their interaction with other authorities involved in criminal proceedings** [*orgány činné v trestním řízení*, see Part B, Chapter 2], especially in the context of pre-trial proceedings. 3

The **lawfulness** of these proceedings is of particular importance. All instructions issued to national authorities by the EPPO, regardless of whether by the college, EDPs or the European Chief Prosecutor, are considered binding and enforceable and subject to relevant review (see Art 42(2), Art 51 EPPO Regulation). Understanding the role of individual actors is thus of paramount importance. 4

Lastly, a distinction must be drawn between **investigations conducted at the national level and those conducted at the Union level**. In particular, investigations at the Union level differ significantly from those at the national level. In many instances, investigations will be carried out within Union institutions. The EPPO has begun establishing working arrangements for such investigations. For instance, the arrangement with the European Investment Bank involves cooperation with its internal fraud detection service, which operates as a form of internal investigative commission. The subsequent analysis will focus on investigations at the national level, specifically in the context of the Czech Republic. 5

4.2. Handling EDP Conducting Investigative Measures (Para 1)

Pursuant to paragraph 1, an EDP is either assigned a case, thereby assuming the role of the handling EDP, or exercises their power of evocation in accordance with the requirements set out in Art 27 EPPO Regulation and proceeds with the investigation. The EDP is obliged to report to the European Public Prosecutor and must keep the Headquarters informed of any case-relevant information. As for the individual EDP offices located in the Czech Republic, see Part A, Chapter 1.¹⁹⁷ 6

As for the term “investigative measures”, see for the most common measures Art 30 EPPO Regulation, and for the term investigation, Art 26 EPPO Regulation, Chapter 2.2.1. 7

4.3. Notification to National Authorities (Para 4)

In exceptional cases where the European Public Prosecutor decides to conduct the investigation directly, both the handling EDP and the national authorities must be notified. This notification must occur without undue delay, and in the Czech Republic, it specifically involves informing the Supreme Prosecutor’s Office.¹⁹⁸ 8

¹⁹⁷ For a recent empirical study among the Czech EDPS, see Hendrych 2025, pp. 85–208

¹⁹⁸ EPPO 2022c, p. 1.

4.4. Purpose of Pre-Trial Proceedings and the Role of EDPs

- 9 Before addressing the specific rights and responsibilities of EDPs, it is essential to briefly outline the role of pre-trial proceedings in the Czech criminal justice system. The primary aim of these proceedings is to determine whether a criminal offence has indeed been committed, to identify the likely offender, and to collect sufficient evidence for the accused to stand trial.
- 10 Historically, Czech criminal law placed significant emphasis on pre-trial proceedings. However, following legislative reforms in 2001, the focus shifted towards **strengthening the main hearing**, recognising that only during the main hearing can the full principles of criminal law – such as **contradictoriness** (adversariality) and **immediacy** – be fully realised.¹⁹⁹ While pre-trial proceedings remain crucial for identifying offenders and clarifying offences, they are **not intended to be protracted**. The shift towards ensuring that the main hearing occupies a central role underscores the importance of a balanced approach between the investigatory and trial phases.²⁰⁰
- 11 In the Czech Republic, it is a general principle that pre-trial proceedings are primarily conducted by law enforcement agencies [*policejní orgán*]. However, while this is materially true, the **public prosecutor** [*státní zástupce*] **retains formal control over the proceedings** and bears ultimate responsibility as *dominus litis*. Their ultimate task is to ensure that legality is upheld throughout pre-trial proceedings (s. 174(1) CCP).
- 12 The public prosecutor does not typically engage in the proceedings prior to investigation [*prověřování*]. However, apart from supervising legality, they are authorised to **conduct investigations *stricto sensu***, as stipulated in s. 174(2)(c) CCP. Under this provision, the prosecutor may carry out specific investigative acts or assume responsibility for the entire investigation.
- 13 Moreover, in certain cases, the public prosecutor **acts as the investigative authority itself** (see below Chapter 4.6). This occurs in instances defined by law, such as cases involving offences committed by members of law enforcement agencies, where impartiality necessitates prosecutorial oversight of the investigation.

- 14 **Section 174**
(1)²⁰¹ The public prosecutor shall supervise the legality of pre-trial proceedings.

¹⁹⁹ For discussion of the adversarial aspects in Czech criminal proceedings, see Pelc 2023, pp. 7–20.

²⁰⁰ The realisation of this aim is always dependent on the specifics of individual cases. Furthermore, certain procedural diversions may bypass the main hearing, shifting the focus away from a full trial. These diversions include plea agreements [*dohoda o vině a trestu*], conditional suspension of criminal investigation [*podmíněné zastavení trestního stíhání*], or penalty order [*trestní příkaz*]. While such mechanisms are designed to expedite justice and reduce the burden on the courts, they also limit the extent to which certain procedural principles are fulfilled and restrict the scope of evidence examined.

²⁰¹ § 174

(2) In addition to the powers specified in s. 157(2), the public prosecutor is authorised to exercise supervisory functions in the following ways:

- (a) issue binding instructions regarding the investigation of criminal offences;
- (b) request files, documents, materials and reports on crimes from the law enforcement agency to verify whether criminal investigation has been initiated promptly and conducted properly;
- (c) participate in the actions undertaken by the law enforcement agency, personally carry out specific actions or, if necessary, the entire investigation, and issue decisions on any matter; in such cases, the public prosecutor shall act in accordance with the provisions of this Act applicable to law enforcement agencies. A complaint may be lodged against the public prosecutor's decision to the same extent as against a decision of a law enforcement agency;
- (d) return the matter to the law enforcement agency with instructions for further action;
- (e) annul unlawful or unjustified decisions and measures of the law enforcement agency and replace them with their own decisions. If the public prosecutor replaces a resolution to discontinue criminal proceedings, this must be done within 30 days of its delivery. If the decision is replaced by the public prosecutor's own decision (other than in response to a complaint by an eligible person), a complaint may be lodged against the prosecutor's decision to the same extent as against the original decision of the law enforcement agency;
- (f) order another person within the law enforcement agency to carry out actions in the matter.

(1) Dozor nad zachováváním zákonnosti v přípravném řízení vykonává státní zástupce.

(2) Kromě oprávnění uvedených v § 157 odst. 2 je při výkonu dozoru státní zástupce oprávněn

a) dávat závazné pokyny k vyšetřování trestných činů,

b) vyžadovat od policejního orgánu spisy, dokumenty, materiály a zprávy o spáchaných trestných činech za účelem prověrky, zda policejní orgán včas zahajuje trestní stíhání a řádně v něm postupuje,

c) zúčastnit se provádění úkonů policejního orgánu, osobně provést jednotlivý úkon nebo i celé vyšetřování a vydat rozhodnutí v kterékoliv věci; přitom postupuje podle ustanovení tohoto zákona pro policejní orgán a proti jeho rozhodnutí je přípustná stížnost ve stejném rozsahu jako proti rozhodnutí policejního orgánu,

d) vracet věc policejnímu orgánu se svými pokyny k doplnění,

e) rušit nezákonná nebo neodůvodněná rozhodnutí a opatření policejního orgánu, která může nahrazovat vlastními; u usnesení o odložení věci může tak učinit do 30 dnů od doručení; jestliže rozhodnutí policejního orgánu nahradil vlastním rozhodnutím jinak než na podkladě stížnosti oprávněné osoby proti usnesení policejního orgánu, je proti jeho rozhodnutí přípustná stížnost ve stejném rozsahu jako proti rozhodnutí policejního orgánu,

f) přikázat, aby úkony ve věci prováděla jiná osoba služebně činná v policejním orgánu.

Section 175²⁰²

(1) The following actions may be performed only by the public prosecutor:

- (a) deciding on the termination of investigation, conditional suspension of investigation, temporary suspension of investigation, or referring the case to another authority;
- (b) filing an indictment;
- (c) negotiating a plea agreement with the accused and submitting a proposal to the court for approval;
- (d) deciding on the release of the accused from custody on remand, the release of the accused from custody on remand with a substitute measure, or modifying the grounds for custody on remand if any of the conditions for remanding them have ceased to exist;
- (e) ordering the seizure of the accused's property, determining which assets are exempt from seizure, or revoking a previous seizure warrant;
- (f) securing the injured party's right to compensation for damage or non-pecuniary damage, or to the restitution of unjustified enrichment, and deciding on the limitation, cancellation, or removal of such security;
- (g) deciding on the destruction of items seized under s. 81b;
- (h) ordering the exhumation of a corpse;
- (i) proposing the extradition of the accused or requesting the issuance of a European Arrest Warrant;
- (j) conducting pre-trial investigations in extradition proceedings or proceedings based on a European Arrest Warrant.

(2) In cases where the investigation is **conducted by a public prosecutor, the nearest higher public prosecutor's office shall supervise compliance with legal standards during pre-trial proceedings**. This does not affect the right of the public prosecutor

²⁰² § 175

(1) Pouze státní zástupce je oprávněn

- a) rozhodnout o zastavení, podmíněném zastavení nebo přerušení trestního stíhání a o postoupení věci jinému orgánu,
- b) podat obžalobu,
- c) sjednat s obviněným dohodu o vině a trestu a podat soudu návrh na její schválení,
- d) rozhodnout o propuštění obviněného z vazby, o propuštění obviněného z vazby za současného nahrazení vazby některým opatřením nahrazujícím vazbu nebo o změně důvodů vazby, pominul-li některý z důvodů vazby,
- e) nařídit zajištění majetku obviněného a určit, na které prostředky a věci se toto zajištění nevztahuje, anebo zrušit takové zajištění,
- f) provést zajištění nároku poškozeného na náhradu škody nebo nemajetkové újmy nebo na vydání bezdůvodného obohacení a omezit nebo zrušit takové zajištění anebo věc z něho vyjmout,
- g) rozhodnout o zničení zajištěné věci podle § 81b,
- h) nařídit exhumaci mrtvoly,
- i) navrhnout vyžádání obviněného z ciziny nebo vydání evropského zatýkacího rozkazu,
- j) provést předběžné šetření v řízení o vydání do ciziny nebo v řízení o předání na základě evropského zatýkacího rozkazu.

(2) Ve věcech, v nichž vyšetřování koná státní zástupce, vykonává dozor nad zachováváním zákonnosti v přípravném řízení státní zástupce nejbližší vyššího státního zastupitelství; tím není dotčeno právo státního zástupce, který koná vyšetřování, učinit rozhodnutí podle § 171 až 173, podle § 307 nebo podle § 309 za podmínek tam uvedených, pokud si toto právo nevyhradil státní zástupce vykonávající dozor.

conducting the investigation to make decisions under ss. 171 to 173, s. 307, or s. 309 and conditions stated therein, provided the authority to make such decisions has not been reserved by the supervising public prosecutor.

It is essential to recognise that the special status of the EDP means that certain provisions of the CCP shall not apply, as was already mentioned in the Introduction to Part B. This is the case **with the national review of a public prosecutor's decision** – specifically, the **extraordinary cassation authority of the Supreme Public Prosecutor** [*zvláštní kasační oprávnění Nejvyššího státního zástupce*] under s. 174a CCP – which does not apply in this context.

15

Section 174a²⁰³

(1) The Supreme Prosecutor may, within three months of a resolution attaining legal effect, annul unlawful resolutions by lower-ranking prosecutors concerning the decision not to prosecute a suspect in accordance with s. 159d(1), the suspension of criminal investigation, or on the transfer of the case. This provision does not apply to resolutions issued by a EDP or a European Public Prosecutor.

(2) For the purposes of supervision, the public prosecutor of the Supreme Prosecutor's Office may request files, documents, materials and reports from lower public prosecutor's offices and conduct inspections.

(3)²⁰⁴ If the Supreme Prosecutor annuls a resolution to terminate criminal investigation or refer the case to the competent authority, the prosecutor who issued the initial resolution shall resume the proceedings. The lower prosecutor shall be bound by the legal reasoning provided by the Supreme Prosecutor and must carry out any actions or further investigations as directed.

(4) If the Supreme Prosecutor annuls a resolution not to investigate a suspect, the law enforcement agency shall determine whether to initiate criminal investigation, unless it otherwise resolves the matter.

16

Extraordinary cassation is not the only mechanism rendered inapplicable to EDPs. Provisions of the Act on the Public Prosecutor's Office on **hierarchical supervision within the national prosecution system similarly do not apply**. Under Czech law, heads of

17

²⁰³ § 174a

(1) Nejvyšší státní zástupce může do tří měsíců od právní moci rušit nezákonná usnesení nižších státních zástupců o nestíhání podezřelého podle § 159d odst. 1, o zastavení trestního stíhání nebo o postoupení věci; to neplatí, jde-li o usnesení vydané evropským pověřeným žalobcem nebo evropským žalobcem.

(2) Za tím účelem může státní zástupce Nejvyššího státního zastupitelství vyžadovat od nižších státních zastupitelství spisy, dokumenty, materiály a zprávy a provádět prověrky.

²⁰⁴ (3) Zruší-li nejvyšší státní zástupce usnesení o zastavení trestního stíhání nebo o postoupení věci, pokračuje v řízení státní zástupce, který ve věci rozhodoval v prvním stupni. Přitom je vázán právním názorem, který vyslovil ve svém rozhodnutí nejvyšší státní zástupce, a je povinen provést úkony a doplnění, jejichž provedení nejvyšší státní zástupce nařídil.

(4) Zruší-li nejvyšší státní zástupce usnesení o nestíhání podezřelého, rozhodne policejní orgán o zahájení trestního stíhání, nevyřídí-li věc jinak.

public prosecutor's offices are authorised to oversee the actions of subordinate prosecutors and issue binding instructions on how cases should be handled. This includes the ability to standardise procedures across similar types of cases and delegate supervisory powers to other prosecutors. Furthermore, superior public prosecutor's offices are empowered to monitor the activities of lower-level offices within their jurisdiction, providing written instructions to ensure consistency in legal proceedings.²⁰⁵

- 18 However, such hierarchical oversight is incompatible with the structure and independence of EDPs within the EPPO framework. As such, EDPs operate autonomously from the national prosecutorial hierarchy and the supervision is conducted by the supervising European Prosecutor and the Permanent Chambers.

4.5. Investigative Assignments to National Authorities

- 19 An introduction to **law enforcement agencies** [*policejní orgán*] was provided above (see Part B, Chapter 2). However, it is important to note that the range of law enforcement agencies authorised to **conduct investigations** on behalf of public prosecutors becomes more restricted once proceedings transition from the proceedings prior to investigation [*postup před zahájením trestního stíhání*] to the investigation *stricto sensu* [*vyšetřování*].
- 20 The legal framework governing investigative authorities in the Czech Republic is outlined in s. 160 CCP, which enumerates the specific bodies authorised to carry out investigations. As mentioned in the previous chapter, there are circumstances in which the public prosecutor may act as the investigative authority, assuming direct responsibility for the conduct of the investigation

21 Section 161 Investigative Authorities²⁰⁶

(1) Investigation refers to the stage of criminal proceedings prior to the filing of an indictment, a proposal for the approval of a plea agreement, referral of the case to another authority, or the termination of criminal investigation, including the approval of a settlement and the conditional suspension of investigation before the filing of an indictment, before the proposal for the approval of a plea agreement or before the application for a penalty.

²⁰⁵ For a detailed overview of the supervisory authority within the national structure of public prosecutors, see ss. 12c–12e of the Act on the Public Prosecutor's Office.

²⁰⁶ § 161 Vyšetřovací orgány

(1) Vyšetřováním se označuje úsek trestního stíhání před podáním obžaloby, návrhu na schválení dohody o vině a trestu, postoupením věci jinému orgánu nebo zastavením trestního stíhání, včetně schválení narovnání a podmíněného zastavení trestního stíhání před podáním obžaloby, návrhu na schválení dohody o vině a trestu.

(2) Nestanoví-li zákon jinak, vyšetřování konají útvary Policie České republiky.

(3) Vyšetřování o trestných činech spáchaných příslušníky Policie České republiky, příslušníky Vězeňské služby České republiky, celníky anebo zaměstnanci České republiky zařazenými k výkonu práce v Policii České republiky a o trestných činech spáchaných zaměstnanci České republiky zařazenými k výkonu práce ve Vězeňské službě České republiky anebo v Celní správě České republiky v souvislosti s plněním jejich pracovních úkolů, koná Generální inspekce bezpečnostních sborů.

(2)²⁰⁷ Unless otherwise provided by law, investigations are conducted by the Police of the Czech Republic.

(3) The investigation of criminal offences committed by members of the Police of the Czech Republic, members of the Prison Service of the Czech Republic, or customs officers, as well as offences committed by employees of the Czech Republic assigned to work within the Police of the Czech Republic, the Prison Service of the Czech Republic, or the Customs Administration of the Czech Republic in connection with their work tasks, is conducted by the General Inspection of Security Forces. [...]

(6) The captain of a ship during long-distance voyages may also conduct an investigation into crimes committed on board of this ship; in doing so, the captain must act in accordance with the provisions governing the procedures of law enforcement agencies conducting investigations. [...]

(8) Other law enforcement agencies may also carry out individual investigative actions upon request.

Section 162 Referral of the Case to the Law Enforcement Agency Responsible for the Investigation²⁰⁸

(1) If a criminal complaint or other grounds for criminal proceedings have been handled by a law enforcement agency other than the one specified in s. 161(2) and the established facts justify the initiation of criminal investigation, the handling law enforcement agency shall, without delay, refer the matter to the competent authority responsible for conducting the investigation. This does not affect its obligation to obtain

²⁰⁷ (4) Vyšetřování o trestných činech spáchaných příslušníky Generální inspekce bezpečnostních sborů, příslušníky Bezpečnostní informační služby, příslušníky Úřadu pro zahraniční styky a informace, příslušníky Vojenského zpravodajství anebo příslušníky Vojenské policie a vyšetřování o trestných činech zaměstnanců České republiky, zařazených k výkonu práce v Generální inspekci bezpečnostních sborů, koná státní zástupce; přitom postupuje přiměřeně podle ustanovení upravujících postup policejního orgánu konajícího vyšetřování. Ustanovení o souhlasu státního zástupce, který je třeba k provedení úkonu policejním orgánem, se neužijí. Při vyšetřování trestných činů spáchaných příslušníky Generální inspekce bezpečnostních sborů, příslušníky Bezpečnostní informační služby, příslušníky Úřadu pro zahraniční styky a informace, příslušníky Vojenského zpravodajství anebo příslušníky Vojenské policie a při vyšetřování trestných činů zaměstnanců České republiky, zařazených k výkonu práce v Generální inspekci bezpečnostních sborů, může státní zástupce požádat orgány uvedené v § 12 odst. 2 v rámci jejich působnosti o opatření jednotlivého důkazu nebo provedení jednotlivého úkonu vyšetřování, o součinnost při opatrování důkazu nebo provádění úkonu vyšetřování, o předvedení osoby nebo za podmínek podle § 62 odst. 1 o doručení písemnosti. Tento orgán je povinen státnímu zástupci urychleně vyhovět.

(5) [...]

(6) Vyšetřování může konat i kapitán lodi při dálkových plavbách o trestných činech spáchaných na této lodi; přitom postupuje přiměřeně podle ustanovení upravujících postup policejního orgánu konajícího vyšetřování.

(7) [...]

(8) Jednotlivé úkony vyšetřování mohou na základě dožádání provést i jiné policejní orgány.

²⁰⁸ **§ 162 Předání věci policejnímu orgánu příslušnému konat vyšetřování**

(1) Jestliže trestní oznámení nebo jiný podnět k trestnímu stíhání prověřoval jiný policejní orgán, než který je uveden v § 161 odst. 2, a zjištěné skutečnosti odůvodňují zahájení trestního stíhání, tento policejní orgán bez odkladu předloží věc orgánu příslušnému konat vyšetřování. Tím není dotčena jeho povinnost na základě dožádání orgánu konajícího vyšetřování opatrovat jednotlivé důkazy, nebo je na základě takového pokynu provádět.

(2) Jestliže se policejní orgán uvedený v § 161 odst. 2, kterému byla věc předána jiným orgánem, nepovažuje za příslušný, předloží spisy neprodleně se svým stanoviskem státnímu zástupci; jinak pokračuje v řízení.

individual pieces of evidence upon request from the investigative authority or to carry out such actions as instructed.

(2) If the law enforcement agency specified in s. 161(2), to which the matter has been referred, considers itself incompetent, it shall immediately submit the file, along with its opinion, to the public prosecutor; otherwise it shall continue the proceedings.

22 Figure 6: Law Enforcement Agencies – Investigation Authorities

 	In the area of tax fraud, the Tax Cobra [<i>Daňová kobra</i>] plays a significant role and is expected to collaborate with the EPPO in relevant investigations. The VAT Act [zákon č. 234/2004 Sb., o dani z přidané hodnoty], does not establish specific criminal offences; therefore, the Tax Cobra investigates tax-related crimes under the provisions of CC. For tax-related EPPO offences, see Part B.III, Annex II: PIF Offences.
 	It is important to note that the Tax Cobra is not a separate, autonomous institution as seen in some other jurisdictions. Instead, it functions as a specialised investigative body, established in 2014 through a memorandum of cooperation between the Ministry of Finance, the Police of the Czech Republic and the Supreme Prosecutor's Office. Police officers from the National Headquarters against Organised Crime of the Criminal Police and Investigation Service [<i>Národní centrála proti organizovanému zločinu</i>, NCOZ] frequently participate in its operations. The activities of Tax Cobra are grounded in the general legal competencies of the participating institutions, operating within the existing legal framework for law enforcement and tax investigations. <i>See the provisions in the Tax Code, VAT Act, CCP, Act on the Police of the Czech Republic.</i>

Source: The authors.

4.6. Urgent Measures by National Authorities for Securing Investigations

23 Urgent measures under national law can be taken by the national authorities to ensure the effectiveness of investigations. For the role of such measures, see above Art 27 EPPO Regulation, Chapter 3.4.

5. Article 29 Privileges or Immunities

5.1. National Rules on Privileges and Immunities (Paragraph 1).....	181
5.2. Legal Provisions on Immunity.....	182
5.2.1. Parliamentary Immunity (Art 27 of the Constitution).....	183
5.2.2. The President (Art 65 of the Constitution).....	184
5.2.3. Constitutional Judges (Art 86 of the Constitution)	186
5.2.4. Judges of General Courts (Act on Courts and Judges).....	186
5.2.5. The Ombudsman (Section 7 of Act on the Ombudsman)	187
5.3. National Provisions on Privileges.....	187
5.3.1. Privilege Against Self-Incrimination.....	187
5.3.2. Further Witness-Related Protective Instruments.....	189
a) Criminal Investigation with the Consent of the Injured Party	189
b) Prohibition of Interrogation.....	189
5.4. Legal Professional Privilege	190
5.5. Key Distinction: Exemptions, Amnesties and Pardons	194
5.6. Immunities and Privileges Under Union Law (Paragraph 2)	196

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.

5.1. National Rules on Privileges and Immunities (Paragraph 1)

The national privileges and immunities, referred to in Art 29(1) EPPO Regulation, can play a significant role in investigations. Their primary **purpose** is to protect certain institutions, persons, relationships or specific types of information. While **immunities** exempt certain individuals from jurisdiction or the reach of criminal investigations based on specific criteria – usually linked to official functions or professions – and may, in some cases, include substantive immunity, **privileges** grant specific rights or protections in relation to criminal proceedings or prosecution without preventing such proceedings from being conducted (e.g. legal privilege, confessional privilege).

1

- 2 From the perspective of an EDP, such privileges or immunities may appear as challenges. From the standpoint of society, civil rights and justice, these privileges serve the function of restricting access to certain types of information, thereby ensuring the principle of equality of arms, which is a corollary to the right to a fair trial (see Art 6 ECHR). Therefore, it is **impermissible to transfer a case** to an EDP in a different Member State solely to circumvent the application of privileges afforded under the law of the state to which the individuals in question belong.
- 3 In the context of an EPPO investigation, such immunities may apply to members of parliament, state officials, civil servants and other categories of individuals. The **EPPO**, together with its **Legal Service Office**, must determine whether a person subject to an investigation is protected by a privilege or immunity. If so, it must **assess the possibility of lifting or waiving the immunity**, and where this is not feasible, seek alternative means of obtaining evidence that is unaffected by the privilege. Pursuant to Art 28(1) EPPO Regulation, while the request may be prepared by an EDP, it is ultimately the European Chief Prosecutor who submits the request. The **EPPO has prepared templates for this purpose**, which are included in the **Working Arrangements** (see Annex V to the Working Arrangement with the EU Commission).

5.2. Legal Provisions on Immunity

- 4 Immunities are **recognised under the law of the Czech Republic**, thereby setting limits to personal jurisdiction in Czech criminal proceedings. The Constitution of the Czech Republic distinguishes between various categories of immunity. The following chapter will provide a brief overview of individuals entitled to immunity (e.g. the president, deputies, judges). Provisions concerning the lifting of the aforesaid immunities are usually embedded in the same sections that define the scope of the immunity itself and shall be discussed therein. In line with these constitutional provisions, s. 10 CCP establishes exemptions from the jurisdiction of authorities involved in criminal proceedings, outlining specific conditions under which certain individuals are shielded from investigation or investigative measures:

- 5 **Section 10²⁰⁹ Exemption from the Jurisdiction of Authorities Involved in Criminal Proceedings**
(1) Persons enjoying privileges and immunities under national or international law are exempt from the jurisdiction of authorities involved in criminal proceedings pursuant to this Act.

²⁰⁹ § 10 Vynětí z pravomoci orgánů činných v trestním řízení

(1) Z pravomoci orgánů činných v trestním řízení podle tohoto zákona jsou vyňaty osoby požívající výsad a imunit podle zákona nebo mezinárodního práva.

(2)²¹⁰ If any doubt arises whether, or to what extent, a person is exempt from the jurisdiction of authorities involved in criminal proceedings under this Act, the Supreme Court shall decide upon a proposal submitted by the person concerned, the public prosecutor, or the court.

5.2.1. Parliamentary Immunity (Art 27 of the Constitution)

Parliamentary immunity is enshrined, *inter alia*, in the following:

6

- Article 27 of the Constitution
- Sections 12–13 of the Act on the Rules of Procedure of the Chamber of Deputies²¹¹
- Sections 13–14 of the Act on the Rules of Procedure of the Senate²¹²

Two distinct forms of parliamentary immunity are recognised.

7

Firstly, Members of Parliament (MPs) enjoy **substantive immunity**, which is **absolute for voting in their respective chambers**. Such voting can never form the basis for criminal liability. MPs also benefit **from partial substantive immunity concerning their speeches** (in Czech terminology *projev*), a term subject to ongoing interpretation by the courts regarding whether it encompasses only oral statements or also non-verbal expressions.

8

For speeches, MPs fall under the disciplinary authority of their respective chambers. This form of immunity functions as a procedural exemption but ultimately results in substantive protection.

9

Secondly, for conduct not covered by the aforementioned privileges, **procedural immunity applies**. This means that MPs cannot be prosecuted during their mandate unless the chamber to which they belong grants consent. If the chamber denies the request or fails to respond, investigation is barred for the duration of the mandate.

10

Specific rules apply to the **custody without charge and arrest of MPs** (for these measures in general, see below Art 33 EPPO Regulation). If an MP is apprehended while committing a crime or immediately thereafter, the competent authority must notify the head of the relevant chamber, who must issue consent within 24 hours for the detained MP to be delivered to court.

11

If no consent is given, the MP must be released. At the next session of the chamber, a final decision must be made on whether investigation may proceed.

12

²¹⁰ (2) Vznikne-li pochybnost o tom, zda nebo do jaké míry je někdo vyňat z pravomoci orgánů činných v trestním řízení podle tohoto zákona, rozhodne o tom na návrh dotčené osoby, státního zástupce nebo soudu Nejvyšší soud.

²¹¹ Zákon č. 90/1995 Sb., o jednacím řádu Poslanecké sněmovny.

²¹² Zákon č. 107/1999 Sb., o jednacím řádu Senátu.

13 Article 27²¹³

(1) Deputies and Senators may not be subject to liability for voting in the Chamber of Deputies, the Senate, or their respective committees.

(2) Deputies and Senators may not be subject to criminal investigation for statements made in the Chamber of Deputies, the Senate, or their respective committees. Deputies and Senators are subject only to the disciplinary authority of the chamber of which they are members.

(3) For administrative offences, Deputies and Senators are subject only to the disciplinary authority of the chamber of which they are members, unless otherwise provided by law.

(4) Deputies and Senators may not be criminally prosecuted without the consent of the chamber of which they are members. If the Chamber refuses to grant consent, criminal investigation is precluded for the duration of their mandate.

(5) Deputies and Senators may be detained only if caught in the act of committing a criminal offence or immediately thereafter. The competent authority must immediately notify the President of the Chamber of which the detainee is a member. If the President of the Chamber does not consent to the handover of the detainee to the court within 24 hours of the detention, the competent authority must release them. At its next session, the Chamber shall make a final decision on the admissibility of investigation.

5.2.2. The President (Art 65 of the Constitution)

14 According to the Constitution, the President **cannot be detained or prosecuted for any crime, misdemeanour, or other administrative offence while in office.**

15 The President may only be prosecuted for **two constitutional offences: treason or a grievous violation of the Constitution** or any other part of the constitutional order. Such prosecution is conducted by the Senate, which may bring an indictment against the President before the Constitutional Court. The procedural framework for these proceedings is outlined in the Act on the Constitutional Court [zákon č. 182/1993 Sb., o

²¹³ Čl. 27

(1) Poslance ani senátora nelze postihnout pro hlasování v Poslanecké sněmovně nebo Senátu nebo jejich orgánech.

(2) Za projevy učiněné v Poslanecké sněmovně nebo Senátu nebo v jejich orgánech nelze poslance nebo senátora trestně stíhat. Poslanec nebo senátor podléhá jen disciplinární pravomoci komory, jejímž je členem.

(3) Za přestupky poslanec nebo senátor podléhá jen disciplinární pravomoci komory, jejímž je členem, pokud zákon nestanoví jinak.

(4) Poslance ani senátora nelze trestně stíhat bez souhlasu komory, jejímž je členem. Odepře-li komora souhlas, je trestní stíhání po dobu trvání mandátu vyloučeno.

(5) Poslance nebo senátora lze zadržet, jen byl-li dopaden při spáchání trestného činu nebo bezprostředně poté. Příslušný orgán je povinen zadržení ihned oznámit předsedovi komory, jejímž je zadržený členem; nedá-li předseda komory do 24 hodin od zadržení souhlas k odevzdání zadrženého soudu, je příslušný orgán povinen ho propustit. Na své první následující schůzi komora rozhodne o přípustnosti stíhání s konečnou platností.

Ústavním soudu], specifically in ss. 97–108. Unlike other proceedings before the Constitutional Court, unless otherwise provided by law, the provisions of the CCP governing court proceedings apply *mutatis mutandis* to constitutional impeachment proceedings.²¹⁴

If the President commits an offence before assuming office, investigation is **temporarily suspended** for the duration of the term of office, but it may resume after the term ends. This constitutes a **procedural exemption**.

16

Article 65²¹⁵

17

- (1) The President of the Republic may not be held in custody without charge, prosecuted for a crime, or tried for an administrative offence while in office.
- (2) The Senate may, with the consent of the Chamber of Deputies, bring a constitutional action against the President of the Republic before the Constitutional Court for treason or a grievous violation of the Constitution or any other part of the constitutional order. Treason shall be understood as an act of the President of the Republic against the sovereignty, integrity, or democratic order of the Republic. The Constitutional Court may, upon receiving a constitutional action from the Senate, rule that the President shall lose office and the capacity to hold it in the future.
- (3) The adoption of a constitutional action by the Senate requires the approval of a three-fifths majority of the Senators present. A three-fifths majority of all deputies is required for the Chamber of Deputies to give its consent. If the Chamber of Deputies does not grant its consent within three months of the Senate's request, consent shall be deemed to have been withheld.

²¹⁴ No President of the Czech Republic or former Czechoslovakia has ever been successfully impeached. Under the procedure outlined in the 1993 Constitution, several attempts were made by the Senate, but only one case proceeded to the Constitutional Court. This case involved Václav Klaus, whose term ended before the proceedings could conclude, leading to their discontinuance. For details, see the decision of the Constitutional Court No Pl. ÚS 17/13 of 27 March 2013.

Notably, two days after the indictment was submitted, an amending act entered into force explicitly allowing impeachment proceedings to continue even after the President leaves office. However, the Constitutional Court ruled that, since the procedural provisions had changed during the course of the proceedings, the more favourable legal framework should apply. As a result, the proceedings were discontinued.

²¹⁵ Čl. 65

- (1) Prezidenta republiky nelze po dobu výkonu jeho funkce zadržet, trestně stíhat ani stíhat pro přestupek nebo jiný správní delikt.
- (2) Senát může se souhlasem Poslanecké sněmovny podat ústavní žalobu proti prezidentu republiky k Ústavnímu soudu, a to pro velezradu nebo pro hrubé porušení Ústavy nebo jiné součásti ústavního pořádku; velezradou se rozumí jednání prezidenta republiky směřující proti svrchovanosti a celistvosti republiky, jakož i proti jejímu demokratickému řádu. Ústavní soud může na základě ústavní žaloby Senátu rozhodnout o tom, že prezident republiky ztrácí prezidentský úřad a způsobilost jej znovu nabýt.
- (3) K přijetí návrhu ústavní žaloby Senátem je třeba souhlasu třípětinové většiny přítomných senátorů. K přijetí souhlasu Poslanecké sněmovny s podáním ústavní žaloby je třeba souhlasu třípětinové většiny všech poslanců; nevysloví-li Poslanecká sněmovna souhlas do tří měsíců ode dne, kdy o něj Senát požádal, platí, že souhlas nebyl dán.

5.2.3. Constitutional Judges (Art 86 of the Constitution)

- 18 The **procedural exemption** granted to constitutional judges is largely similar to that of Members of Parliament, as their investigation likewise requires formal consent while they hold office. However, in the case of constitutional judges, **consent must always be given by the Senate of the Parliament of the Czech Republic**. If such consent is denied, the denial is effective only for the duration of the judge's mandate.

19 **Article 86**²¹⁶

- (1) A judge of the Constitutional Court may not be prosecuted without the consent of the Senate. If the Senate refuses consent, criminal investigation is barred for the duration of the judge's term of office.
- (2) A judge of the Constitutional Court may only be held in custody without charge if caught in the act of committing a criminal offence or immediately thereafter. The competent authority must immediately inform the Head of the Senate of the custody without charge. If the Head of the Senate does not grant consent for the judge to be surrendered to the court within 24 hours of the custody without charge, the competent authority must release the judge. At its next session, the Senate shall decide on the admissibility of the investigation.
- (3) A judge of the Constitutional Court has the right to refuse to testify about facts learned in connection with the performance of judicial duties, even after ceasing to serve as a judge of the Constitutional Court.

5.2.4. Judges of General Courts (Act on Courts and Judges)

- 20 Judges of general courts (Section 76 of the Act on Courts and Judges)²¹⁷ benefit from only **partial procedural exemption**. Specifically, if a judge commits an offence during the performance of their duties or in connection with those duties, they may be prosecuted or detained only with the consent of the President. In all other instances, judges may be prosecuted **without** any special requirements.

²¹⁶ Čl. 86

(1) Soudce Ústavního soudu nelze trestně stíhat bez souhlasu Senátu. Odepře-li Senát souhlas, je trestní stíhání po dobu trvání funkce soudce Ústavního soudu vyloučeno.

(2) Soudce Ústavního soudu lze zadržet jen, byl-li dopaden při spáchání trestného činu, anebo bezprostředně poté. Příslušný orgán je povinen zadržení ihned oznámit předsedovi Senátu. Nedá-li předseda Senátu do 24 hodin od zadržení souhlas k odevzdání zadrženého soudu, je příslušný orgán povinen ho propustit. Na své první následující schůzi Senát rozhodne o přípustnosti trestního stíhání s konečnou platností.

(3) Soudce Ústavního soudu má právo odepřít svědectví o skutečnostech, které se dozvěděl v souvislosti s výkonem své funkce, a to i poté, kdy přestal být soudcem Ústavního soudu.

²¹⁷ Zákon č. 6/2002 Sb., o soudech a sodecích.

Section 76 of Act No 6/2002, on Courts and Judges

(1)²¹⁸ For acts committed in the course of performing judicial duties or in connection with the performance of such duties, a judge may be prosecuted or detained only with the consent of the President of the Republic.

(2) The authority initiating criminal investigation against a judge must inform the Ministry of Justice and the president of the relevant court.

5.2.5. The Ombudsman (Section 7 of Act on the Ombudsman)

The ombudsman also enjoys **partial procedural exemption**. During their mandate, the ombudsman **may not be prosecuted without the consent of the Chamber of Deputies** of the Parliament of the Czech Republic.

21

Section 7 of Act No 349/1999 Coll., on the Ombudsman²¹⁹

(1) The ombudsman may not be prosecuted without the consent of the Chamber of Deputies. If the Chamber of Deputies refuses to grant consent, criminal investigation of the ombudsman is barred for the duration of the mandate. [...]

22

5.3. National Provisions on Privileges

5.3.1. Privilege Against Self-Incrimination

The Charter stipulates the following:

Article 37 of the Charter²²⁰

(1) Everyone has the right to refuse to give testimony if doing so would incriminate themselves or a person close to them. [...]

23

The entire criminal procedure is underpinned by the principles of this privilege, as an articulation of *nemo tenetur se ipsum accusare*. Under this principle, authorities are prohibited from compelling the accused to actively participate in the collection of evidence against themselves.²²¹

24

This principle is explicitly upheld in relation to interrogations. Section 33(1) CCP guarantees to the accused that they have the right to comment on all facts and evidence presented against them but are **not** obliged to testify. This is further reinforced in s. 92(1)

25

²¹⁸ § 76

(1) Pro činy spáchané při výkonu funkce soudce nebo v souvislosti s výkonem této funkce lze soudce trestně stíhat nebo vzít do vazby jen se souhlasem prezidenta republiky.

(2) Orgán, který zahájil trestní stíhání proti soudci, o tom vyrozumí ministerstvo a předsedu příslušného soudu.

²¹⁹ § 7

(1) Ochránce nelze trestně stíhat bez souhlasu Poslanecké sněmovny. Odepře-li Poslanecká sněmovna souhlas, je trestní stíhání ochránce vyloučeno po dobu výkonu působnosti ochránce. [...]

²²⁰ Článek 37

(1) Každý má právo odepřít výpověď, jestliže by jí způsobil nebezpečí trestního stíhání sobě nebo osobě blízké.

²²¹ For Czech approach to *nemo tenetur*, see the articles of Musil 2009, pp. 252–263 or Holländer 2017, pp. 89–113.

CCP, second sentence, which clearly provides that the accused must not be coerced in any manner to testify or confess.

- 26 While the privilege against self-incrimination is most directly associated with interrogation, its scope extends beyond this context. Article 37 of the Charter finds more extensive articulation also through court rulings. For example, during visual identification according to s. 104b CCP, the accused may be compelled to stand and be identified, thereby passively participating in the identification process by standing. However, they cannot be compelled to speak, as this would constitute active participation in their own incrimination.²²²
- 27 Recent innovations in Czech criminal law open further challenges to *nemo tenetur se ipsum accusare*, such as plea agreements, which are often based on the possibility of negotiating a lesser penalty in return for entering into such an agreement.²²³ Another issue is the rise of modern technologies, such as unlocking electronic devices by voice instructions, fingerprints or by visual identification.²²⁴
- 28 With regard to witnesses, the right to refuse to testify is addressed in s. 100 CCP, which explicitly includes the right against self-incrimination in paragraph 2, but limited in scope when compared with the accused.

29 **Section 100 Right to Refuse to Testify and to Give Evidence²²⁵**

(1) The right to refuse to testify as a witness is granted to relatives of the accused in a direct line of descent, siblings, adopted children, spouses, or partners or companions. If there is more than one accused and the witness is related to only one of them, the witness may refuse to testify about the other accused only if their testimony concerning the other accused cannot be separated from their testimony concerning the accused to whom they are related.

(2) A witness is entitled to refuse to testify if doing so would place themselves or a relative (in a direct line of descent, a sibling, an adoptive parent, an adoptee, a spouse, a

²²² On relation of *nemo tenetur se ipsum accusare*, see the landmark judgment of the Constitutional Court No III. ÚS 528/06 of 11 October 2007. More about visual identification in Czech criminal proceedings can be found in Dvořák 2022, in relation to *nemo tenetur*, see Dvořák 2022, p. 156–162.

²²³ On *nemo tenetur* and plea agreements, see Ottová 2022, pp. 311–330.

²²⁴ Ráliš 2024, pp. 113–127.

²²⁵ **§ 100 Právo odepřít výpověď**

(1) Právo odepřít výpověď jako svědek má příbuzný obviněného v pokolení přímém, jeho sourozenec, osvojitel, osvojenec, manžel, partner a druh; jestliže je obviněných více a svědek je v uvedeném poměru jen k některému z nich, má právo odepřít výpověď stran jiných obviněných jen tehdy, nelze-li odloučit výpověď, která se jich týká, od výpovědi týkající se obviněného, k němuž je svědek v tomto poměru.

(2) Svědek je oprávněn odepřít vypovídat, jestliže by výpověď způsobil nebezpečí trestního stíhání sobě, svému příbuznému v pokolení přímém, svému souroženci, osvojiteli, osvojení, manžel, partneru nebo druhu anebo jiným osobám v poměru rodinném nebo obdobném, jejichž újmu by právem pocíťoval jako újmu vlastní.

(3) Odepřít výpověď jako svědek nemůže však ten, kdo má stran trestného činu, jehož se svědecká výpověď týká, oznamovací povinnost podle trestního zákona.

partner, a companion, or any other person in a family or similar relationship whose harm they would reasonably perceive as their own) at risk of criminal investigation.

(3) However, a person who is under a legal obligation to report the offence under the Criminal Code in relation to the matter on which the witness statement pertains may not refuse to give evidence as a witness.

5.3.2. Further Witness-Related Protective Instruments

a) Criminal Investigation with the Consent of the Injured Party

In addition to the principle of *nemo tenetur se ipsum accusare*, CCP contains provisions requiring the consent of the injured party for criminal proceedings to be **initiated or continued** in relation to certain offences. These offences primarily concern situations involving special personal relationships, such as between spouses, partners, or cohabitants. Given their limited relevance to the EPPO and white-collar crime, these provisions will be introduced only briefly.

Where **multiple persons** are harmed by the same criminal offence, the consent of a single injured party is sufficient. The injured party retains the right to withdraw their consent at any time through an explicit declaration, up until the appellate court retires for final deliberation. However, once consent has been expressly refused, it cannot be subsequently granted. For a comprehensive list of applicable offences, see ss. 163 and 163a CCP.

Consent is not required in certain circumstances, such as where the offence resulted in death, where the injured party is under fifteen years of age, mentally incapacitated, or where consent was withheld or withdrawn under duress, coercion, dependency, or subordination. If the injured party does not immediately respond to a request from law enforcement regarding their consent, they are afforded a period of up to **thirty days to make a decision**. Failure to respond within this timeframe precludes any future possibility of granting consent. The injured party must be duly notified of this deadline in writing.

b) Prohibition of Interrogation

The CCP also contains specific provisions concerning the interrogation of witnesses. It is prohibited to interrogate a witness regarding facts **involving classified information protected by a special statute**, which the witness is legally bound to keep confidential, unless they have been relieved of this obligation by the competent authority (s. 99(1) CCP).²²⁶

²²⁶ The statute referred to herein is Act on the Protection of Classified Information and on Security Clearance [zákon č. 412/2005 Sb., o ochraně utajovaných informací a o bezpečnostní způsobilosti].

- 34 Prohibition of interrogation also applies to **confidentiality obligations** (s. 99(2) CCP), which may arise from two distinct sources. Firstly, such obligations may be **imposed by the state**, such as postal secrecy [*listovní tajemství*] or banking secrecy [*bankovní tajemství*]. Secondly, confidentiality may be **recognised by the state**, for example, in the context of clergy confidentiality relating to the seal of confession [*zpovědní tajemství*] or similar privileged communications as maintained by selected religious organisations. These confidentiality protections do not affect the legal obligation to prevent criminal offences (traditionally by reporting), as prescribed by s. 367 CC.²²⁷

35 **Section 99 Prohibition of Interrogation**

(1) A witness may not be interrogated regarding matters involving classified information protected under special statutes, which they are obliged to keep confidential unless they have been released from this obligation by the competent authority. Such release may only be refused if the testimony would cause serious harm to the state.

(2) A witness may also not be interrogated if their testimony would breach a confidentiality obligation imposed or recognised by the state, unless they have been released from this obligation by the competent authority or by the person in whose interest the confidentiality is maintained.

(3) The prohibition of interrogation under paragraph 2 does not apply to testimony concerning a criminal offence for which the witness has a statutory duty to report under the Criminal Code. It also does not apply to testimony concerning classified information designated as Confidential [*důvěrné*] or Restricted [*vyhrazené*] under special statutes.²²⁸

5.4. Legal Professional Privilege

- 36 Section 85b CCP provides for special procedures governing searches of the dwelling or non-residential premises where a counsel practises law, in cases where documents containing information subject to the counsel's duty of confidentiality may be present. In such instances, the authority conducting the search must request the assistance of the **Czech Bar Association** and is prohibited from inspecting the contents of documents covered by confidentiality without the consent of a representative of the Czech Bar Association. If the representative of the Bar refuses to grant consent, the documents in question must be secured in a manner that ensures no one can access their contents and they must be handed over to the Bar Association. The representative's withheld consent may be overridden by a judicial decision from the supervising court of the authority that

²²⁷ At the time of this manuscript's submission, a Concordat between the Czech Republic and the Holy See had been signed, specifying the scope of the seal of confession. However, due to certain controversies surrounding this agreement, the outcome of the ratification process remains uncertain, and readers are advised to monitor developments in this area.

²²⁸ The statute referred to herein is Act on the Protection of Classified Information and on Security Clearance [zákon č. 412/2005 Sb., o ochraně utajovaných informací a o bezpečnostní způsobilosti].

ordered the search, provided the authority applies for such a decision within 15 days of the refusal.

Some issues relating to legal privilege have been addressed in a **ruling** by the Czech Supreme Court, published under No 35/2015 of criminal judgments (as published under No 35/2015 of criminal judgments, File No Tpjn 306/2014). This ruling established that, in pre-trial proceedings, the judge authorised to rule on an application pursuant to s. 85b(3) CCP is the judge of the competent district court designated by its work schedule pursuant to s. 26 CCP. This judge need not necessarily be the same judge who authorised the search or the search of non-residential premises.

Additionally, the ruling clarified what constitutes **premises** subject to search, given the specific nature of the legal profession. The term “non-residential premises in which the counsel practises the profession” must be interpreted in accordance with its purpose as encompassing any premises associated with the practice of law that may contain information about clients, whether in written, electronic, or other forms. Besides the registered office of a counsel, this includes, for example, a branch office of a law firm, the office of a counsel located within the registered office of a company to which they provide legal services, the counsel’s vehicle, or locations designated for archiving or storing the counsel’s files.

Furthermore, the ruling specified that the **procedure** under s. 85b CCP applies to any place associated with the practice of law where client information, subject to the counsel’s duty of confidentiality, may be stored, processed, or accessed. Such places may include various electronic data storage facilities, whether hosted on the counsel’s own data storage systems or on external servers, including websites, cloud storage, or other remote data repositories operated by third parties. While it does not qualify as “non-residential premises” under s. 85b CCP when counsel practises law from their home, the special regime still applies if the premises are searched as a dwelling.

Section 85b²²⁹

(1) When conducting a search of a dwelling or a search of non-residential premises where a counsel practises law, if there may be documents containing information subject to the counsel’s duty of confidentiality, the authority carrying out the action must request the cooperation of the Czech Bar Association (hereinafter referred to as “Association”). The authority conducting the search may only inspect the contents of such documents

²²⁹ § 85b

(1) Při provádění domovní prohlídky nebo prohlídky jiných prostor, v nichž advokát vykonává advokacii, pokud se zde mohou nacházet listiny, které obsahují skutečnosti, na něž se vztahuje povinnost mlčenlivosti advokáta, je orgán provádějící úkon povinen vyžádat si součinnost České advokátní komory (dále jen „Komora“); orgán provádějící úkon je oprávněn seznámit se s obsahem těchto listin pouze za přítomnosti a se souhlasem zástupce Komory, kterého ustanoví předseda Komory z řad jejích zaměstnanců nebo z řad advokátů. Stanovisko zástupce Komory je třeba uvést v protokolu podle § 85 odst. 3.

in the presence of, and with the consent of, a representative of the Association, appointed by the President of the Association from among its employees or counsels. The opinion of the representative of the Association must be recorded in the protocol in accordance with s. 85(3).

(2)²³⁰ If the representative of the Association refuses to grant consent pursuant to paragraph 1, the documents must be secured in the presence of the authority conducting the search, the counsel and the representative of the Association in a manner that ensures that no one can access, destroy, or damage them. The documents must then be handed over to the Association without delay. The Association must return these documents to the counsel without delay after the time limit for submitting the proposal under paragraph 5 has expired without a proposal being filed. The Association shall follow a similar procedure if the proposal is rejected, either wholly or partially, in which case it will return only the documents to which the rejection applies. The Association must also return the documents without delay once it has been informed of the procedure under paragraph 6.

(3) In the case referred to in the first sentence of paragraph 2, the consent of the representative of the Association may be replaced by a decision of the judge of the nearest higher court, at which the presiding judge or an authorised judge pursuant to ss. 83(1) and 83a(1) may order a search of a dwelling or a search of non-residential premises. In cases of searches of non-residential premises conducted by a law enforcement agency under s. 83a(2) and (3), the proposal is submitted, in accordance with the first sentence, by the presiding judge authorised to issue the warrant or, in pre-trial proceedings, by the public prosecutor.

(4) In addition to the general requirements of s. 59(3), the proposal must specify the documents for which the petitioner seeks to replace the consent of the representative of

²³⁰ (2) Odmítne-li zástupce Komory souhlas podle odstavce 1 udělit, musí být listiny za účasti orgánu provádějícího úkon, advokáta a zástupce Komory zabezpečeny tak, aby se s jejich obsahem nemohl nikdo seznámit, popřípadě je zničit nebo poškodit; bezprostředně poté musí být příslušné listiny předány Komoře. Komora vrátí advokátovi tyto listiny bez odkladu poté, co marně uplyne lhůta k podání návrhu podle odstavce 5. Komora postupuje obdobně, byl-li návrh zamítnut, a to i ohledně některých listin; v takovém případě Komora vrátí advokátovi jen ty listiny, kterých se zamítnutí návrhu týká. Komora vrátí advokátovi listiny bez odkladu též poté, kdy byla informována o postupu podle odstavce 6.

(3) V případě uvedeném v odstavci 2 větě první lze souhlas zástupce Komory nahradit na návrh orgánu, který domovní prohlídku nebo prohlídku jiných prostor nařídil, rozhodnutím soudce nejbližší nadřízeného soudu, u něhož působí předseda senátu nebo soudce, který je oprávněn podle § 83 odst. 1 a § 83a odst. 1 nařídít domovní prohlídku nebo prohlídku jiných prostor. V případě prohlídky jiných prostor provedené policejním orgánem podle § 83a odst. 2 nebo 3 podává návrh podle věty první předseda senátu oprávněný k vydání příkazu a v přípravném řízení státní zástupce.

(4) Návrh musí kromě obecných náležitostí (§ 59 odst. 3) obsahovat označení listin, ohledně kterých se navrhovatel domáhá nahrazení souhlasu zástupce Komory k seznámení se s jejich obsahem, a vylíčení skutečností svědčících o tom, proč nesouhlas zástupce Komory k seznámení se orgánem provádějícím úkon s obsahem těchto listin má být nahrazen rozhodnutím soudce podle odstavce 3. K návrhu je třeba připojit protokol, v němž je zaznamenán nesouhlas zástupce Komory s tím, aby se orgán provádějící úkon s obsahem listin seznámil.

the Association and describe the reasons why the representative of the Association withheld consent. The proposal must be accompanied by a protocol documenting the disagreement of the representative of the Association with the authority's attempt to inspect the contents of the documents.

(5)²³¹ The proposal must be submitted within 15 days from the date on which the representative of the Association refused to grant consent for the petitioner to inspect the documents in question.

(6) The judge shall not consider a proposal that lacks the necessary information or is incomprehensible or vague. The provisions of s. 59(3), third and fourth sentences, do not apply. The judge shall proceed similarly if the proposal is filed late or by an unauthorised person. The judge must inform both the petitioner and the Association of this decision without delay.

(7) If the judge does not act in accordance with paragraph 6, they must consider the proposal in a public session without undue delay and order the Association to present the documents in question. In addition to other actions, the judge shall verify whether the security of the documents submitted by the Association has been maintained and review their contents; simultaneously, the judge shall take measures to ensure that neither the petitioner nor any other person can become aware of the contents of the documents during the public session.

(8) If the public session is adjourned, the judge must secure the documents in a manner that prevents unauthorised access, destruction, or damage.

²³¹ (5) Návrh je třeba podat do 15 dnů ode dne, kdy zástupce Komory odmítl udělit souhlas k seznámení se s obsahem listin, ohledně kterých se navrhovatel podle odstavce 4 domáhá nahrazení souhlasu zástupce Komory k seznámení se s jejich obsahem.

(6) K návrhu, který neobsahuje všechny náležitosti nebo který je nesrozumitelný nebo neurčitý, soudce nepřihlíží; ustanovení § 59 odst. 3 věta třetí a čtvrtá se nepoužije. Obdobně soudce postupuje, byl-li návrh podán opožděně nebo byl-li podán někým, kdo k návrhu není oprávněn. O tomto postupu informuje soudce bez odkladu navrhovatele a Komoru.

(7) Nepostupoval-li soudce podle odstavce 6, projedná bez zbytečného odkladu návrh ve veřejném zasedání a Komoře uloží, aby mu při něm předložila listiny, ohledně kterých se navrhovatel domáhá nahrazení souhlasu zástupce Komory k seznámení s jejich obsahem. Soudce vedle jiných úkonů též prověří, zda nebylo porušeno zabezpečení listin předložených Komorou, a seznámí se s jejich obsahem; současně učiní opatření, aby se navrhovatel a ani nikdo jiný o obsahu listin při veřejném zasedání nemohl dozvědět.

8) Dojde-li k odročení veřejného zasedání, soudce listiny zabezpečí tak, aby se s jejich obsahem nemohl nikdo seznámit, popřípadě je zničit nebo poškodit.

(9) Soudce návrhu vyhoví, dojde-li k závěru, že listina neobsahuje skutečnosti, o nichž je dotčený advokát povinen zachovávat mlčenlivost; v opačném případě návrh zamítne.

(10) Vyhoví-li soudce návrhu alespoň zčásti, předá bez odkladu po právní moci usnesení listiny, ohledně nichž byl nahrazen souhlas zástupce Komory k seznámením se s jejich obsahem, orgánu provádějícímu úkon a uloží mu, aby je Komoře vrátil ihned poté, jakmile se s jejich obsahem seznámí; to neplatí, mají-li být takové listiny použity jako důkaz v trestním řízení. Listiny, ohledně kterých byl návrh zamítnut, soudce vrátí bez odkladu po právní moci usnesení Komoře.

(11) V případě, že listiny není možné odevzdat orgánu provádějícímu úkon, Komoře nebo jejich zástupcům osobně, doručí se nejpozději první pracovní den následující po dni, v němž nabylo usnesení právní moci, orgánu provádějícímu úkon nebo Komoře prostřednictvím soudního doručovatele nebo orgánů justiční stráže.

(12) Listinou v odstavcích 1 až 11 se rozumí jak písemnost, popřípadě její část, tak i jiný nosič informací.

(9) The judge shall grant permission if it is determined that the documents do not contain information subject to the counsel's duty of confidentiality; otherwise, the proposal must be rejected.

(10) If the judge grants the proposal, either wholly or partially, they must, without delay after issuing the final decision, hand over the relevant documents to the authority conducting the search, with instructions to return the documents to the Association as soon as their content has been inspected, unless such documents are to be used as evidence in criminal proceedings. The judge must return the documents relating to the rejected part of the proposal to the Association without delay after issuing the final decision.

(11) If it is not possible to hand over the documents to the authority conducting the search, the Association, or their representatives in person, they shall be delivered to the authority or the Association by court delivery or judicial guard authorities no later than the first working day following the date on which the resolution became final.

(12) For the purposes of paragraphs 1 to 11, "document" refers to both written documents or parts thereof and other information carriers.

5.5. Key Distinction: Exemptions, Amnesties and Pardons

- 41 Finally, it is important to clarify that immunities and privileges are distinct from amnesties and pardons and must be clearly differentiated under Czech law, although they are sometimes mistakenly confused. **Amnesty and pardon are constitutive** decisions that *ex tunc* prohibit the state from acting in a specific manner towards the individual, even when the conditions for personal jurisdiction are met; as opposed to **immunities and privileges**, which *ex nunc* prevent the initiation or continuation of criminal proceedings for the duration of the protected status (**procedural exemption**), or precluding the possibility of committing a crime altogether (**substantive exemption**), as in the case of Members of Parliament's voting activities.
- 42 Amnesties and pardons are governed exclusively by national law, and **their scope is in no manner limited or modified by the intervention of the EPPO**. Therefore, understanding these rules is essential to determine the circumstances under which the right to continue an investigation is precluded.
- 43 A **pardon** may be granted only by the President, either upon request or at the President's discretion without a formal request. If granted without a request, the decision may be based on a notification (e.g. by the Minister of Justice) or entirely on the President's personal knowledge and discretion. As a result of a pardon, criminal proceedings **may not be initiated, ongoing criminal proceedings must be discontinued, or the execution of a sentence may be interrupted, abolished, or postponed**. Additionally, the negative consequences of a judgment may be annulled.
- 44 In contrast to a pardon, an **amnesty is not granted individually** but applies to all persons who meet the criteria specified in the decision to grant an amnesty.

This right is enshrined for both pardon and amnesty already in the Constitution (see Art 62–63), divided into actions that require **no countersignature** [*bez kontrasignace*] and those that do require **countersignature** [*s kontrasignaci*]. Under Art 62(g) of the Constitution, the President may, without the need for governmental countersignature, **pardon and mitigate penalties imposed by the courts and expunge convictions**. This power allows the President to act unilaterally.

45

Conversely, certain actions require the formal countersignature of the Prime Minister or a government-appointed minister. Namely, Art 63(1)(j) of the Constitution stipulates that the President may order that criminal proceedings **not be initiated or**, if already initiated, that they be **discontinued**. Further on, Art 63(1)(k) of the Constitution grants the President the **right to declare an amnesty**. Both of these decisions require the countersignature of the Prime Minister – or an appointed member of the government – to be valid (Art 63(3)). Furthermore, Art 63(4) of the Constitution clarifies that the government bears political responsibility for decisions that require such a countersignature.

46

To provide further detail, Chapter 23 of CCP sets out the following rules:

47

Section 366 The Granting of a Pardon

48

(1) The President of the Republic grants pardons based on the authority vested in them by the Constitution.

(2) The President of the Republic shall determine the circumstances in which the Minister of Justice may process a pardon request and reject it without providing reasons.

(3) If the President of the Republic orders the granting of a pardon, criminal proceedings that have not yet been initiated shall not be commenced, ongoing criminal proceedings shall be discontinued and the accused shall be released from custody on remand. The execution of the penalty may also be postponed or interrupted.

Section 367 Pardon Proceedings

In the cases referred to in s. 366(2), the Minister of Justice conducts the proceedings and may reject an unfounded request. The Minister may also order that:

(a) criminal investigation not be initiated, ongoing criminal investigation be discontinued and the accused be released from custody on remand; or

(b) execution of the penalty be postponed or interrupted, until the request for pardon is processed.

Section 368 Decision on the Use of Amnesty

The decision on whether and to what extent an individual who has been legally sentenced is covered by an amnesty shall be made by the court that delivered the first-instance decision.

If the individual is serving a sentence of imprisonment at the time of the decision, jurisdiction lies with the district court in whose district the sentence of imprisonment is being served. A complaint may be lodged against this decision and such a complaint shall have a suspensive effect.

Section 369 Conditional Pardon

If the penalty or its remainder is pardoned under specific conditions, the court that delivered the first-instance decision shall monitor the fulfilment of these conditions and the re-education of the convicted person.

The provisions of s. 329 concerning cooperation with associations of citizens shall apply accordingly.

Section 370 Change in the Scope of the Penalties

(1) If the penalty is fully or partially waived by amnesty for only one of the crimes for which a cumulative penalty was imposed and the penalty has not yet been fully executed, the court shall determine an appropriate penalty for the remaining crimes unaffected by the amnesty, based on their relative seriousness. A complaint may be lodged against this decision and such a complaint shall have a suspensive effect.

(2) The decision under paragraph 1 shall be made in a public session by the court that imposed the original penalty in the first instance.

5.6. Immunities and Privileges Under Union Law (Paragraph 2)

- 49** If the privileges or immunities of a Union official need to be lifted, specific procedures must be followed in accordance with Union law. The consolidated version of the Treaty on the Functioning of the European Union includes these provisions in a protocol. The protocol of the consolidated version of the Treaty can be accessed under Protocol (No 7) on the privileges and immunities of the European Union, 7th June 2016 ([2016] OJ C202/1).

II. National Law Applicable in EPPO Investigations with Focus on Investigative Measures

The following section offers a focused analysis of the national provisions corresponding to Chapter V, Section 2 of the EPPO Regulation, which governs rules on investigative and related measures.

1. Article 30 Investigative Measures

1.1. Constitutional Context of Investigative Measures	199
1.2. Minimum Investigative Measures (Paragraph 1).....	202
1.2.1. Structure under the CCP	202
1.2.2. Searches of a Dwelling, Non-Residential Premises and Land; Personal Search (Art 30(1)(a))	204
a) Search of a Dwelling, Search of Non-Residential Premises and Land	206
i. Search of a Dwelling.....	206
ii. Searches of Non-Residential Premises and Land	207
iii. Rights and Recommended Conduct During a Search.....	207
iv. Recording Authorities During Searches	208
b) Entry into Dwellings, Non-Residential Premises and Land.....	209
c) Personal Search	210
d) Differentiating Between Searches [<i>prohlídka</i>] and Examination [<i>ohledání</i>]	211
1.2.3. Seizure of Items for Criminal Proceedings (Art 30(1)(b) and (d))	211
a) Seizure of Items for Evidentiary Purposes	213
i. Presentation or Surrender of an Item	213
ii. Withdrawal of an Item	214
b) Seizure of Instruments, Proceeds of Crime, and Replacement Value	215
i. General Introduction	215
ii. Freezing of Funds in a Bank Account.....	219
iii. Creditor Standing in Asset Seizure	221
iv. Hierarchy of Asset Seizure: Criminal Law, Penalties and Creditors' Claims	222
c) Seizure of Items to Secure the Claim of the Injured Party	223
1.2.4. Computer Data and Banking Account Data (Art 30(1)(d)).....	227
a) Securing Computer Data	228
b) Disclosure of Banking Account Data and Traffic Data	229
1.2.5. Interception of Telecommunications Traffic (Art 30(1)(e))	233
a) Wiretapping and Recording of Telecommunications Traffic	234

b) Retrieval of Telecommunications Traffic Data.....	238
1.2.6. Detention, Opening, Substitution and Tracking of Shipments (Art 30(1)(f))	240
1.2.7. Ancillary Measures: Means of Operational Search.....	243
a) Simulated Transfer	244
b) Surveillance of Persons and Items.....	245
c) Use of an Agent	247
1.3. Minimum Investigative Measures and Remedies under CCP	249
1.4. Limits on Investigations under National Law (Paragraph 2).....	252
1.5. Investigative Limits under National Law and Art 117 (Paragraph 3) ..	252
a) Interception of Telecommunications Traffic (Art 30(1)(e))	252
b) Tracking and Tracing of Objects (Art 30(1)(f)).....	253
1.6. Any Other Measures in the EDP's Member State (Paragraph 4)	253
1.6.1. Evidentiary Means under Czech Law	253
a) Means of Evidence and Ineffective Evidence	254
b) Evidence Across Stages of Criminal Proceedings	255
1.6.2. Testimony of the Accused.....	256
1.6.3. Testimony of Witnesses	261
1.6.4. Experts, Expert Offices and Expert Institutes	267
1.6.5. Examination.....	274
1.6.6. Physical and Documentary Evidence	277
1.6.7. Special Forms of Evidence.....	278
a) Confrontation [<i>konfrontace</i>].....	279
b) Identification [<i>rekognice</i>]	279
c) Investigative Experiment [<i>vyšetřovací pokus</i>]	279
d) Reconstruction [<i>rekonstrukce</i>]	279
e) Verification on Site [<i>prověrka na místě</i>].....	280

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

- (a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;
- (b) obtain the production of any relevant object or document either in its original form or in some other specified form;
- (c) obtain the production of stored computer data, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law

pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council;

(d) freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the judgement ordering confiscation.

(e) intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using;

(f) track and trace an object by technical means, including controlled deliveries of goods.

2. Without prejudice to Article 29, the investigation measures set out in paragraph 1 of this Article may be subject to conditions in accordance with the applicable national law if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.

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

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

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

1.1. Constitutional Context of Investigative Measures

Article 30 EPPO Regulation provides **multiple avenues for detecting EU fraud** and sets out a minimum standard of effective investigative measures (paragraph 1) that must be available to EDPs. E-evidence has become increasingly important for the EDPs.²³² Furthermore, paragraph 4 affirms that all measures available to national prosecutors must likewise be accessible to EDPs. As their specifics are to be found within Czech

1

²³² Bachmaier Winter 2024, pp. 1–29 in-depth on projects, recent developments, suggestions for a definition of inadmissible evidence and exclusionary rules, which may even have an impact on EPPO investigations, e.g. in cross-border situations.

statutes and they may feature intrusions into personal rights as guaranteed by the constitutional order of the Czech Republic, it is crucial to **strictly adhere to the law** and observe procedural details when conducting investigations in the Czech Republic (on discussion of the so-called constitutional order of the Czech Republic, see Part A.III, Chapter 1, letter a)).

- 2 The provisions of the CCP are not merely “law in the books” but constitute the fundamental prerequisite to combating EU frauds *in praxi* and often reflect broader context of Czech constitutional order, with the relevant provisions analysed below. Some measures may require the involvement of courts if specific investigative measures are requested by prosecutors. For example, searches of dwellings, which are highly intrusive but essential investigative tools for the EPPO, are subject to judicial authorisation by the presiding judge of the competent court, as stipulated in ss. 83 et seq. CCP. Section 26 CCP, in particular, addresses the question of jurisdiction for actions taken during pre-trial proceedings (see Part B, Chapter 2.3).
- 3 Using searches of dwellings as an example, it becomes evident how critical **compliance with national law** is. Failure to observe the procedural details of Czech law by the EPPO or EDPs could result in gathered evidence being inadmissible in proceedings, or with regard to Art 33 EPPO Regulation, a suspect of EU fraud would have to be released from custody. It is advisable for defence counsel to consider these provisions carefully, as the ineffectiveness of a measure may arise from non-compliance with individual provisions and could be successfully argued before the court.
- 4 In **cross-border investigations**, it is particularly important to adhere to these rules and to respect the provisions set out in Art 31 EPPO Regulation, understanding at the same time the limits of their scrutiny as recently interpreted in the ECJ Judgment *G.K. and Others*, No C-281/22 (request for a preliminary ruling from the Oberlandesgericht Wien, *Parquet européen*; see summarised above in Part A.I, Chapter 1.1 and analysed sub Art 31 EPPO Regulation, Chapter 2.3).
- 5 Namely, when EDPs issue or order search measures in criminal proceedings corresponding to Art 30(1)(a) EPPO Regulation, they must primarily respect Art 12 of the Charter of Fundamental Rights and Freedoms [Listina základních práv a svobod, vyhlášena formou zvláštního usnesení Předsednictva ČNR č. 2/1993 Sb.], which safeguards the inviolability of a person’s dwelling:

6 Article 12

(1)²³³ A person’s dwelling is inviolable. It may not be entered without the permission of the person residing there.

²³³ Článek 12

(2) A dwelling may be searched only for the purposes of criminal proceedings, based on a search warrant issued in writing by a judge and stating the reasons. The manner in which a dwelling may be searched shall be specified by law.

(3)²³⁴ Other encroachments upon the **inviolability of a dwelling** may be permitted by law only if they are necessary in a democratic society for the protection of life or health, the rights and freedoms of others, or to avert a serious threat to public security and order. Where a dwelling is also used for business or other economic activities, the law may additionally permit such encroachments if they are essential for the performance of public administrative duties.

In light of the measures available under Art 30(1)(e) EPPO Regulation, the defence should also carefully consider and monitor new jurisprudence regarding Art 10 of the Charter. As will be further discussed in relation to some provisions of the CCP, this article occasionally provides a backdrop for analysing the limits of certain investigative measures, such as s. 88a CCP.

Article 10²³⁵

(1) Everyone has the right to demand respect for their human dignity, personal honour and good reputation, and to have their name protected.

(2) Everyone has the right to be protected from unauthorised intrusion into their private and family life.

(3) Everyone has the right to protection against the unauthorised collection, public disclosure, or other misuse of their personal data.

Finally, with regard to various measures under Art 30 EPPO Regulation, particularly Art 30(1)(f), compliance with Art 13 of the Charter must also be observed.

(1) Obydli je nedotknutelné. Není dovoleno do něj vstoupit bez souhlasu toho, kdo v něm bydlí.

(2) Domovní prohlídka je přípustná jen pro účely trestního řízení, a to na písemný odůvodněný příkaz soudce. Způsob provedení domovní prohlídky stanoví zákon.

²³⁴ (3) Jiné zásahy do nedotknutelnosti obydlí mohou být zákonem dovoleny, jen je-li to v demokratické společnosti nezbytné pro ochranu života nebo zdraví osob, pro ochranu práv a svobod druhých anebo pro odvrácení závažného ohrožení veřejné bezpečnosti a pořádku. Pokud je obydlí užíváno také pro podnikání nebo provozování jiné hospodářské činnosti, mohou být takové zásahy zákonem dovoleny, též je-li to nezbytné pro plnění úkolů veřejné správy.

²³⁵ **Článek 10**

(1) Každý má právo, aby byla zachována jeho lidská důstojnost, osobní čest, dobrá pověst a chráněno jeho jméno.

(2) Každý má právo na ochranu před neoprávněným zasahováním do soukromého a rodinného života.

(3) Každý má právo na ochranu před neoprávněným shromažďováním, zveřejňováním nebo jiným zneužíváním údajů o své osobě.

10 Article 13²³⁶

No one shall violate the secrecy of correspondence or the confidentiality of other written documents and records, whether kept privately or transmitted by post or other means, except in cases and under conditions prescribed by law. The confidentiality of communications transmitted by telephone, telegraph, or other similar devices is equally guaranteed.

1.2. Minimum Investigative Measures (Paragraph 1)

1.2.1. Structure under the CCP

- 11 Member States must ensure that EDPs are empowered to order or request the minimum investigative measures stated in Art 30(1) EPPO Regulation. When examining the situation in the Czech Republic, the specific formulation of these measures in CCP, along with their limitations as set out in the Charter, must be considered. The minimum investigative measures are predominantly outlined in **Part I, Chapter 4 [Část první, Hlava čtvrtá] of the CCP**.²³⁷ Due to multiple revisions, this structure has become increasingly complex and, at times, lacks logical consistency – with some measures **located elsewhere**. Therefore, it is essential to first provide the reader with a structured overview.
- 12 Provisions on **obtaining computer data** (s. 7a CCP) and **banking account data** (s. 8(2) CCP) are located still in Part I, but in Chapter 1 of the CCP as opposed to Chapter 4. Similarly, measures classified as the **means of operational search** (simulated transfers, surveillance of items and persons, use of an agent) are found elsewhere. Notably, these are not in Part I but in Part II on pre-trial proceedings (ss. 158b–158f CCP).
- 13 Although their use is primarily associated with pre-trial proceedings and their regulation is embedded within provisions governing this stage, they may also be applied after the filing of an indictment (s. 158f CCP). While some of these measures – particularly simulated transfers and the use of an agent – likely fall outside the scope of minimum investigative measures and instead relate to Art 30(4) EPPO Regulation, they are traditionally analysed alongside them in Czech criminal procedure.

²³⁶ Článek 13

Nikdo nesmí porušit listovní tajemství ani tajemství jiných písemností a záznamů, ať již uchovávaných v soukromí, nebo zasílaných poštou anebo jiným způsobem, s výjimkou případů a způsobem, které stanoví zákon. Stejně se zaručuje tajemství zpráv podávaných telefonem, telegrafem nebo jiným podobným zařízením.

²³⁷ The equality of conditions for national prosecutors and EDPs is also ensured at a general level under the Act on the Public Prosecutor's Office. Pursuant to s. 34d of the Act, the European Chief Prosecutor, European Prosecutors, and EDPs have the same rights and obligations as national prosecutors, to the extent permitted by the EPPO Regulation. The EPPO is also authorised to access registers, databases, and records under the same conditions as national prosecutors for criminal proceedings. Additionally, the provision regulates the exchange of information between the EPPO and the Czech prosecution service, applying relevant provisions (s. 12g(1) and (2) of the Act) by analogy. Similarly, the Minister of Justice retains the right to request information on the status of proceedings in cases handled by the EPPO, as per s. 13(1) of the Act.

Based on the Czech Republic's notification to the EPPO regarding the limitation on the use of s. 158d CCP (surveillance of items and persons), it is evident that this measure is intended to fall within the scope of Art 30(1). All three measures are examined here to maintain structural coherence with the Czech CCP and ensure a comprehensive analysis. 14

To facilitate the use of the CCP and national legal sources, a brief introduction to the traditional classification will be provided. In the Czech CCP – and consequently in common legal discourse – these measures are classified according to the sequential order of the CCP rather than the structure of the Regulation: 15

1. **Seizure of items relevant to criminal proceedings** (ss. 77b–81b) – The discussion first focuses on methods for obtaining evidence, followed by measures for seizing instruments, proceeds of a crime, and replacement values. 
2. **Searches of dwellings, non-residential premises and land, personal searches, and entry into dwellings, and non-residential premises** (ss. 82–85c)
3. **Detention and opening of shipments, their substitution, and tracking** (ss. 86–87c)
4. **Wiretapping and recording of telecommunications traffic** (s. 88), **retrieval of telecommunications traffic data** (s. 88a)
5. **Means of operational search** (ss. 158b–158d)

The obtainment of computer and banking account data is **rarely** discussed within this scope. 16

The following analysis will adhere to the sequence of measures outlined under Art 30(1)(a) to (f), beginning with searches of dwellings. Each segment will reference the corresponding letter of Art 30(1) EPPO Regulation. The naming and structure of each subchapter will nonetheless follow national statutes to provide an accurate overview of the measures available under the respective provisions of domestic law. For this purpose, the measures under **letters (b) and (d) of Art 30(1) EPPO Regulation will be examined together**, as seizure and freezing involve multiple relevant cross-references in national law. 17

Since the national regulation does not directly follow the structure of the European framework, there is no exact correspondence between them, and certain instruments may overlap. This generally does not pose an issue – what matters is the **purpose and implementation of each instrument within national law, rather than its alignment with the structure of Art 30(1) EPPO Regulation**, which primarily aims to ensure the availability of these measures, irrespective of how they are structured. 18

Nota bene: The authority of an EDP (the handling EDP in a Member State) to order or request investigative measures, as specifically outlined in Art 30 EPPO Regulation, ne- 

cessitated amendments to national statutes or a revised interpretation. The Czech Republic has accordingly amended its Criminal Procedure Code and Act on the Public Prosecution, with **several exceptions notified in accordance with Art 117 EPPO Regulation**. These instances will be mentioned in due course.

1.2.2. Searches of a Dwelling, Non-Residential Premises and Land; Personal Search (Art 30(1)(a))

- 19 The need to comply with constitutional guarantees as set out in the Charter is most starkly tangible in the context of searches of dwellings – aside from the retrieval of telecommunications traffic data (see s. 88a CCP, as discussed below in Chapter 1.2.5).
- 20 The Czech CCP distinguishes the following four categories of conducting searches (or rather, merely accessing land in the third instance), each subject to a slightly different legal regime:



- Search of a dwelling (s. 83 CCP)
- Search of non-residential premises and land (s. 83a CCP)
- Entry into dwellings, non-residential premises and land (s. 83c CCP)
- Personal search (s. 83b CCP)

- 21 We will begin by outlining the common provisions that apply across different types of searches. Searches of dwellings and searches of non-residential premises and land will then be discussed together to highlight their differences. This will be followed by an analysis of entry into dwellings, which constitutes a distinct legal regime separate from searches. Lastly, personal searches will be examined.
- 22 The person whose dwelling is subject to the search, or an adult member of their household, or, in the case of searches of other premises, a member of their staff, must be allowed to be present during the search. A record of the search must be made and any items released or seized during the search must be precisely described in the record.

23 **Section 82 Grounds for Searches of Dwellings, Personal Searches, and Searches of Non-Residential Premises and Land**²³⁸

(1) A search of a dwelling may be conducted if there is reasonable suspicion that an object or person important for criminal proceedings is present in a dwelling, which includes an apartment, another residential space, or associated premises.

²³⁸ § 82 Důvody domovní prohlídky a osobní prohlídky a prohlídky jiných prostor a pozemků

(1) Domovní prohlídku lze vykonat, je-li důvodné podezření, že v bytě nebo v jiné prostře sloužící k bydlení nebo v prostorách k nim náležejících (obydlí) je věc nebo osoba důležitá pro trestní řízení.

(2) Z důvodů uvedených v odstavci 1 lze vykonat i prohlídku prostor nesloužících k bydlení (jiných prostor) a pozemků, pokud nejsou veřejně přístupné.

(3) Osobní prohlídku lze vykonat, je-li důvodné podezření, že někdo má u sebe věc důležitou pro trestní řízení.

(4) U osoby zadržené a u osoby, která byla zatčena nebo která se bere do vazby, lze vykonat osobní prohlídku též tehdy, je-li tu podezření, že má u sebe zbraň nebo jinou věc, již by mohla ohrozit život nebo zdraví vlastní nebo cizí.

(2) For the reasons specified in paragraph 1, a search may also be conducted in non-residential premises or on land, provided they are not publicly accessible.

(3) A personal search may be conducted if there is reasonable suspicion that an individual is in possession of an item relevant to criminal proceedings.

(4) A personal search may also be conducted on a detained person, a person who has been arrested, or a person being remanded in custody, if there is suspicion that they possess a weapon or another item that could endanger their own life or health, or that of others.

Performance of Inspections and Entry into Dwellings, Non-Residential Premises and Land

Section 85

(1) The authority conducting a search of a dwelling or a search of non-residential premises is obliged to allow the person on whom the act is being carried out, or any adult member of their household or, in the case of a search of non-residential premises, their employee, to participate in the search. The authority must inform these persons about their right to be present during the search.

(2) An independent observer must be present to witness the conduct of a personal search or a search of a dwelling. The authority conducting the search must present proof of its authorisation.

(3) The search protocol must also indicate whether the provisions regarding prior interrogation were observed, or provide the reasons for non-compliance. If an item was issued or seized during the search, the information required under s. 78(5) must also be included in the protocol.

(4) The authority conducting the search must issue a written confirmation of the search results and of any items issued or seized during the process, or provide a copy of the protocol, immediately after the search or, if this is not possible, within 24 hours.

(5) When entering dwellings, non-residential premises and land, the provisions of paragraphs 1 to 4 shall apply proportionately. However, the participation of the persons mentioned in paragraph 1, as well as the admission of the person referred to in paragraph 2, may be denied if there is a risk to their life or health.

Section 85a

(1) A person whose dwelling, non-residential premises, or land is subject to a search, is obliged to tolerate the search.

(2) If the person against whom the act under paragraph 1 is directed does not allow it to be carried out, the authority conducting the search is entitled to overcome the resistance or any obstacles created by the person after a prior unsuccessful request to comply. The authority must record this in the protocol (s. 85(3)).

Section 85b

See above Art 29 EPPO Regulation, Chapter 5.4.

Section 85c Performing Evidence in an Apartment, a Dwelling, Non-Residential Premises and Land

The provisions of ss. 83, 83a, 84, 85, 85a and 85b shall also apply if a reconstruction, an identification, a verification on site, or an investigative experiment is carried out at the locations specified in these provisions, where the nature of the action requires it to be conducted at that location and the person with whom the act is to be performed has not consented.

a) Search of a Dwelling, Search of Non-Residential Premises and Land

i. Search of a Dwelling

- 24 This search may only be conducted if there is reasonable suspicion that a person or an item of significance to criminal proceedings is located in the dwelling or other premises used for living purposes, or in premises attached thereto (“dwelling”, *obydlí* in Czech), see s. 82(1) CCP.
- 25 The Czech Criminal Code provides a legal definition of a dwelling, describing it as “a house, apartment, or other space used for living and related accessories” (s. 133 CC). This definition has been further clarified by courts. A recent decision emphasised that the protection applies to spaces used for living, specifically where an individual maintains their household and private sphere.²³⁹ The court underscored that the nature of the use is decisive, rather than the design or structure of the building.

26 Section 83 Warrant for a Search of a Dwelling²⁴⁰

(1) A search of a dwelling may be ordered by the presiding judge, or in pre-trial proceedings, by a judge upon the request of the public prosecutor. In urgent cases, the presiding judge or judge within whose jurisdiction the search is to be conducted may issue the warrant instead of the competent presiding judge or judge (s. 18). The search warrant must be issued in writing and must be duly reasoned. It shall be delivered to the person whose premises are being searched at the time of the search, or if that is not possible, no later than 24 hours after the obstacle preventing delivery has been removed.

(2) A search of a dwelling shall be carried out by the law enforcement agency upon the order of the presiding judge or judge.

²³⁹ See the resolution of the Supreme Court No 3 Tdo 992/2020 of 25 November 2020.

²⁴⁰ § 83 Příkaz k domovní prohlídce

(1) Nařídit domovní prohlídku je oprávněn předseda senátu a v přípravném řízení na návrh státního zástupce soudce. V neodkladných případech tak může namísto příslušného předsedy senátu nebo soudce (§ 18) učinit předseda senátu nebo soudce, v jehož obvodu má být prohlídka vykonána. Příkaz k domovní prohlídce musí být vydán písemně a musí být odůvodněn. Doručí se osobě, u níž se prohlídka koná, při prohlídce, a není-li to možné, nejpozději do 24 hodin po odpadnutí překážky, která brání doručení.

(2) Na příkaz předsedy senátu nebo soudce vykoná domovní prohlídku policejní orgán.

ii. Searches of Non-Residential Premises and Land

This refers to the search of a land which is not open to the public (s. 82(2) CCP). Publicly accessible premises may be searched without a warrant. While s. 83a CCP, which governs obtaining a warrant for the search of non-residential premises, refers back to the rules on searches of dwellings, it introduces a significant deviation in s. 83a(2) CCP. This provision permits a search of non-residential premises and land without a prior warrant if obtaining one in advance is not feasible and the matter is urgent, with the obligation of obtaining *ex post* approval. If such approval is not granted retrospectively, any evidence collected cannot be used and is rendered null and void. Furthermore, for these types of searches, the requirement for obtaining a prior warrant may be waived with these types of searches if the person voluntarily consents to the search being conducted.

27

Section 83a Warrant for the Search of Non-Residential Premises and Land²⁴¹

(1) The provisions of s. 83(1) and (2) shall apply *mutatis mutandis* to the ordering and execution of searches of non-residential premises and land.

(2) In cases where obtaining a warrant in advance is not possible and the matter is urgent, a law enforcement agency may conduct a search of non-residential premises or land without a warrant. However, the law enforcement agency must immediately request *ex post* approval from the competent authority authorised to issue such a warrant; in pre-trial proceedings, this must be done through the public prosecutor. If the competent authority does not grant approval retrospectively, the results of the search cannot be used as evidence in further proceedings.

(3) A law enforcement agency may also conduct a search of non-residential premises or land without a warrant if the user of the premises or land provides written consent, which is then submitted to the law enforcement agency. However, the law enforcement agency must immediately notify the presiding judge authorised to issue the warrant and, in pre-trial proceedings, the public prosecutor.

28

iii. Rights and Recommended Conduct During a Search

When authorities involved in criminal proceedings conduct a search, it is essential to understand the rights of the individual or entity whose dwelling or premises are being

29

²⁴¹ § 83a Příkaz k prohlídce jiných prostor a pozemků

(1) Na nařízení a provedení prohlídky jiných prostor a pozemků se obdobně užije § 83 odst. 1 a 2.

(2) Bez příkazu může policejní orgán provést prohlídku jiných prostor nebo pozemků, jestliže vydání příkazu nelze předem dosáhnout a věc nesnese odkladu. Policejní orgán je však povinen si bezodkladně dodatečně vyžádat souhlas orgánu oprávněného k vydání příkazu; v přípravném řízení tak činí prostřednictvím státního zástupce. Pokud oprávněný orgán souhlas dodatečně neudělí, nelze výsledek prohlídky použít v dalším řízení jako důkaz.

(3) Bez příkazu může policejní orgán provést prohlídku jiných prostor nebo pozemků také tehdy, pokud uživatel dotčených prostor nebo pozemků písemně prohlásí, že s prohlídkou souhlasí, a své prohlášení předá policejnímu orgánu. O tomto úkonu však musí policejní orgán bezodkladně vyrozumět předsedu senátu oprávněného k vydání příkazu a v přípravném řízení státního zástupce.

searched – in EPPO investigations, particularly premises of legal persons subject to investigation in white-collar crime cases. The following outlines key procedural steps during a search.

- 30 Officials executing the search must **identify themselves** and specify the authority overseeing the operation. The search warrant usually specifies **which unit** is to carry out the search. In practice, officers present not only the warrant but also their service identification card to demonstrate their affiliation with the designated unit. However, this practice is not governed by any binding regulation.
- 31 There is **no legal restriction preventing the initial point of contact** (often a receptionist or administrative staff member in corporate settings) from **reaching out to a designated company representative** who will liaise with the authorities. Investigators may be informed of this request, and, where possible, they may agree to wait for the representative's arrival. However, they are **not obliged** to delay the search and may proceed immediately.
- 32 In most cases, officials will conduct the search on the basis of a **judicial warrant**, which the interested party [*zúčastněná osoba*] is entitled to review. It is advisable to request permission to **make a copy or scan** of the warrant to ensure that it can be forwarded to company representatives and legal counsel as soon as possible.
- 33 There is no automatic right to delay the search until an attorney is present. Investigators may proceed immediately, and challenging this may lead to unnecessary conflict. However, the interested party is **entitled to contact legal counsel immediately**. **Authorities cannot interrogate individuals** or extract substantive statements related to the case **without the presence of legal counsel**, unless the individual **voluntarily agrees to respond**. The right to legal representation in such circumstances may be asserted firmly but professionally.
- 34 Investigators may request the voluntary handover of specific documents or electronic data. In such cases, it is advisable to **wait for the arrival of legal counsel** before complying. If investigators refuse to wait, documents may be **seized only through a formal procedure** after the individual has explicitly refused voluntary handover (see below Chapter 1.2.3, letter a), ii)).

iv. Recording Authorities During Searches

- 35 Recording authorities involved in criminal proceedings during searches raises important legal considerations regarding the rights of individuals subject to the search and the extent to which they may document such proceedings. As a general rule, such actions may be recorded **as long as they involve the exercise of public authority**. Following the enactment of the new Civil Code [*zákon č. 89/2012 Sb., občanský zákoník*], the Ministry

of the Interior's Department of Security Policy [Odbor bezpečnostní politiky Ministerstva vnitra] issued an opinion confirming that the documentation of official actions – regardless of **whether recorded in audio or audiovisual form, or as photographs** – is **permissible in both public and private spaces** when it concerns the execution of official powers.²⁴²

The principle of proportionality serves as a **limiting factor**. While general documentation is permitted, excessive or unjustified interference may constitute an unlawful intrusion. For instance, **broadcasting a live stream** of an ongoing police intervention, particularly one involving an immediate response to a suspect, or recording a seriously injured officer after an incident, could exceed the permissible limits of such documentation and potentially infringe upon individual rights. 36

Apart from this, Czech law does not explicitly regulate the right of individuals to record police actions during searches. The Act on the Police of the Czech Republic [zákon č. 273/2008 Sb., o Policii České republiky] does not contain a specific provision allowing or prohibiting such recordings. However, its s. 62 grants police officers the authority to document their own actions, and legal scholars frequently refer to a **reciprocal right of individuals to document law enforcement actions affecting them**, highlighting that official licensing provisions allow recordings to be made without the subject's consent, **provided they are used for official purposes in accordance with the law**.²⁴³ 37

Furthermore, the Civil Code explicitly supports this position in s. 88(1), which states that consent is not required if a likeness, sound, or visual recording is made or used **in the exercise or protection of other rights or legally protected interests**. This provision reinforces the principle that documenting law enforcement actions serves a legitimate purpose and does not require the prior consent of the individuals involved. 38

b) Entry into Dwellings, Non-Residential Premises and Land

The purpose of entry under this provision is not to seize items but to remove an imminent danger if damage could result from a delay and the entry is necessary for the protection of life or health (cf. s. 83c CCP). A law enforcement agency may enter land in this manner but may not during its activities following entry, perform any actions other than those necessary to remove the danger. For example, it may not conduct a search or seize an item. 39

²⁴² Available at: <https://mv.gov.cz/soubor/porizovani-zaznamu-policistu-pri-vykonu-sluzby-pdf.aspx>. Accessed 31 March 2025.

²⁴³ Vangeli 2014, pp. 254–255.

40 Section 83c Entry into a Dwelling, Non-Residential Premises, and Land

(1)²⁴⁴ A law enforcement agency may enter a dwelling, non-residential premises, or land only if the matter is urgent and entry is necessary to protect life or health, safeguard other rights and freedoms, or prevent a serious threat to public safety and order.

(2) A law enforcement agency may also enter the premises specified in paragraph 1 if they contain a person who:

(a) is subject to an order for detention, arrest, or committal to serve a sentence of imprisonment or a protective measure involving deprivation of liberty;

(b) must be brought before the authorities for the purposes of criminal proceedings; or

(c) must be detained.

(3) After entering the premises specified above, no actions may be taken other than those necessary to eliminate the imminent danger or to bring the person before the authorities.

c) Personal Search

41 A personal search (s. 83(2) CCP) may be conducted where there is reasonable suspicion that a person possesses an item relevant to criminal proceedings. It may also be carried out on detained or arrested persons if there is a suspicion that they are in possession of a weapon or other item that could endanger their own or another person's life or health.

42 Section 83b Warrant for a Personal Search²⁴⁵

(1) A personal search may be ordered by the presiding judge or, in pre-trial proceedings, by the public prosecutor or, with the prosecutor's approval, by the law enforcement agency.

(2) If the personal search is not carried out by the authority that ordered it, it shall be conducted by the law enforcement agency upon the warrant of the issuing authority.

²⁴⁴ **§ 83c Vstup do obydlí, jiných prostor a na pozemek**

(1) Policejní orgán může vstoupit do obydlí, jiných prostor nebo na pozemek jen tehdy, jestliže věc nesnese odkladu a vstup tam je nezbytný pro ochranu života nebo zdraví osob nebo pro ochranu jiných práv a svobod nebo pro odvrácení závažného ohrožení veřejné bezpečnosti a pořádku.

(2) Policejní orgán dále může na místa uvedená v odstavci 1 vstoupit v případech, že se v nich nachází osoba,

a) na kterou byl vydán příkaz k zadržení, příkaz k zatčení nebo příkaz k dodání do výkonu trestu odnětí svobody nebo do výkonu ochranného opatření spojeného se zbavením osobní svobody,

b) kterou je třeba předvést pro účely trestního řízení, nebo

c) kterou je třeba zadržet.

(3) Po vstupu na místa shora uvedená nesmějí být provedeny žádné jiné úkony než takové, které slouží k odstranění naléhavého nebezpečí nebo k předvedení osoby.

²⁴⁵ **§ 83b Příkaz k osobní prohlídce**

(1) Nařídít osobní prohlídku je oprávněn předseda senátu a v přípravném řízení státní zástupce nebo s jeho souhlasem policejní orgán.

(2) Nevykoná-li osobní prohlídku orgán, který ji nařídil, vykoná ji na jeho příkaz policejní orgán.

(3) Osobní prohlídku vykonává vždy osoba stejného pohlaví.

(4) Bez příkazu nebo souhlasu uvedeného v odstavci 1 může policejní orgán vykonat osobní prohlídku jen tehdy, jestliže příkazu nebo souhlasu předem dosáhnout nelze a věc nesnese odkladu, anebo jestliže jde o osobu přistíženou při činu nebo o osobu, na kterou byl vydán příkaz k zatčení. Bez příkazu nebo souhlasu lze též provést osobní prohlídku v případech uvedených v § 82 odst. 4.

(3) A personal search must always be conducted by a person of the same sex as the individual being searched.

(4) A law enforcement agency may conduct a personal search without a warrant or prior approval as specified in paragraph 1 only if obtaining such a warrant or approval in advance is not possible and the matter is urgent, or if the individual is caught in the act or is subject to an arrest warrant. A personal search may also be conducted without a warrant or approval in cases specified in s. 82(4).

d) Differentiating Between Searches [*prohlídka*] and Examination [*ohledání*]

The Czech CCP includes s. 113, which may be misleading when interpreting the EPPO Regulation, as it governs **examination** [*ohledání*], which must be distinguished from **searches** [*prohlídka*]. The procedure under s. 113 CCP refers to a **(brief) examination and analysis that**, simply put, is **not primarily designed to seize items** (be it for evidentiary or other purposes) but **rather to establish facts (which in themselves may serve as evidence)**.

Its primary purpose is to **document the current state of the examined object or subject** as part of the evidentiary process (e.g. a crime scene, a body, or a document). It is typically conducted by law enforcement agencies, often with the involvement of experts (e.g. forensic specialists).

Consequently, it can be reasonably argued that s. 113 CCP does not fall within the scope of Art 30(1)(c) EPPO Regulation. Therefore, it does not qualify as a minimum standard measure but may fall within the scope of other measures under Art 30(4) EPPO Regulation (see below Chapter 1.6).

1.2.3. Seizure of Items for Criminal Proceedings (Art 30(1)(b) and (d))

The measures examined herein primarily fall within the scope of Art 30(1)(b) and (d) EPPO Regulation, as they enable the seizure of items for various purposes. These purposes are distinguished in s. 77b(1) CCP, which defines an “item relevant for criminal proceedings”. Depending on the category under which an item falls, different measures are available, as shall be seen below.

Items intended for **evidentiary purposes** (s. 77b(1)(a) CCP) clearly correspond to Art 30(1)(b) EPPO Regulation, which covers the obtaining or production of objects or items. Conversely, **instruments, proceeds, and substitute assets** (s. 77b(1)(b) to (d) CCP) fall within the scope of measures that the EDP will primarily require under Art 30(1)(d) EPPO Regulation. Some **cross-references** to provisions pertaining to withdrawal of items facilitate utilisation of methods available for evidentiary purposes also for other purposes, e.g. when an item must be first physically withdrawn so that it can be later seized.

- 48 Apart from that, **securing the claim of an injured party** is also possible, ensuring that assets of the accused can be **temporarily seized** to cover potential compensation for damages suffered due to the offence.
- 49 The law stipulates that **seizing an item for evidentiary purposes takes precedence over seizing it for other grounds**. However, the grounds for seizing an item may be **altered** during the course of the proceedings by the competent authority. Additionally, it is permissible to seize an item even if the owner is unknown.

50 **Section 77b**²⁴⁶

(1) An item important for criminal proceedings is an item that:

- (a) can be used for evidentiary purposes;
- (b) is an instrument of criminal activity;
- (c) constitutes proceeds from criminal activity; or
- (d) represents a replacement value for an item mentioned sub (b) or (c).

(2) If an item forming part of the property in a trust fund or a mutual fund is subject to seizure, it shall be seized to the trustee or manager of the mutual fund. If the owner of the item relevant to criminal proceedings is unknown, the item shall be seized without specifying the person from whom it was seized. The resolution must indicate when, where and for what reason the item was seized.

(3) Seizing an item for evidentiary purposes takes precedence over other reasons for seizing an item. The grounds for seizing the item, as per ss. 47, 78, 79, 79a, 79g, 344a, 347, or 358b, may be modified during the criminal proceedings by a resolution, against which a complaint is admissible. There is no requirement to issue a decision on changing the grounds for seizing an item if the conditions for declaring its forfeiture or impoundment, when seized for evidentiary purposes, are met.

²⁴⁶ § 77b

(1) Věcí důležitou pro trestní řízení je věc, která

- a) může sloužit pro důkazní účely,
- b) je nástrojem trestné činnosti,
- c) je výnosem z trestné činnosti, nebo
- d) je náhradní hodnotou za věc uvedenou v písmenech b) a c).

(2) Podléhá-li zajištění věc, která je součástí majetku ve svěřenském fondu nebo v podílovém fondu, zajistí se svěřenskému správci nebo obhospodařovateli podílového fondu. Není-li známo, komu věc důležitá pro trestní řízení patří, zajistí se bez uvedení osoby, již byla zajištěna; v opatření se uvede, kdy a kde a z jakého důvodu k zajištění věci došlo.

(3) Zajištění věci pro důkazní účely má přednost před jinými důvody zajištění věci. Důvod zajištění podle § 47, 78, 79, 79a, 79g, 344a, 347 nebo 358b lze v průběhu trestního řízení změnit usnesením, proti kterému je přípustná stížnost. O změně důvodu zajištění není třeba rozhodovat v případě, kdy jsou splněny podmínky pro vyslovení propadnutí nebo zabrání věci, která je zajištěna k důkazním účelům.

(4) Neohroží-li to dosažení účelu trestního řízení, nezajistí se věc bezcenná nebo věc, jejíž zajištění je z jiných důvodů neúčelné. Vždy se však zajistí věc, která má propadnout nebo být zabráněna na základě rozhodnutí soudu, které dosud nenabýlo právní moci.

(5) Nestanoví-li zákon jinak, lze práva třetích osob k zajištěné věci důležité pro trestní řízení uplatnit pouze v řízení ve věcech občanskoprávních.

(4) If seizing an item does not jeopardise the purpose of the criminal proceedings, an item of no value or an item whose seizure is otherwise impractical shall not be seized. However, an item subject to forfeiture or seizure by a judicial decision that has not yet become final must always be seized.

(5) Unless otherwise provided by law, the rights of third parties concerning seized property relevant to criminal proceedings may only be enforced through civil proceedings.

a) Seizure of Items for Evidentiary Purposes

To seize an item for evidentiary purposes, it is possible to request its **presentation or surrender (s. 78 CCP)**, or, alternatively, to **withdraw the item (s. 79 CCP)**. 51

i. Presentation or Surrender of an Item

The competent authority must warn the person that failure to comply with the request may result in the item being withdrawn (s. 79 CCP) or a fine being imposed (s. 66 CCP). Both measures may be applied concurrently. 52

The duty to present an item applies to all persons, except those exempted under s. 10 CCP, and pertains to anything relevant to criminal proceedings. The only exceptions to s. 78 CCP are specified in paragraph 2, which exempts documents or other tangible media containing visual, audio, or data recordings relating to matters covered by the prohibition on interrogation, unless the obligation to maintain confidentiality has been waived (s. 99 CCP, see Art 29 EPPO Regulation, Chapter 5.3.2, letter b)). 53

Section 78 Obligation to Present an Item²⁴⁷

(1) Any person in possession of an item that can be used for evidentiary purposes is obliged to present it to the court, the public prosecutor, or law enforcement agency upon request. Upon such a request, the person must be informed that failure to comply may result in the item being withdrawn, as well as other consequences of non-compliance (s. 66). The presiding judge or, in pre-trial proceedings, the public prosecutor or law enforcement agency is authorised to request the presentation or surrender of the item. 54

(2) The obligation under paragraph 1 does not apply to a document or any other tangible medium containing visual, audio, or data recordings, the content of which relates to

²⁴⁷ § 78 Povinnost k předložení nebo vydání věci

(1) Kdo má u sebe věc, která může sloužit pro důkazní účely, je povinen ji na vyzvání předložit soudu, státnímu zástupci nebo policejnímu orgánu; je-li ji nutno pro účely náležitého zjištění skutečností důležitých pro trestní řízení zajistit, je povinen takovou věc na vyzvání těmito orgány vydat. Při vyzvání je třeba ho upozornit na to, že nevyhoví-li výzvě, může mu být věc odňata, jakož i na jiné následky nevyhovění (§ 66). Vyzvat k předložení nebo vydání věci je oprávněn předseda senátu, v přípravném řízení státní zástupce nebo policejní orgán.

(2) Povinnost podle odstavce 1 se nevztahuje na listinu nebo na jiný hmotný nosič obsahující obrazový, zvukový nebo datový záznam, jejichž obsah se týká okolností, o které platí zákaz výslechu, ledaže došlo k zproštění povinnosti zachovat věc v tajnosti nebo k zproštění povinnosti mlčenlivosti.

(3) Nikoho nelze nutit, aby předložil nebo vydal věc, jež v době, kdy je požádáno o její předložení nebo vydání, může sloužit jako důkaz proti němu nebo proti jeho osobě blízké; tím nejsou dotčena ustanovení o odnětí věci, domovní prohlídce, prohlídce jiných prostor a pozemků a osobní prohlídce.

matters subject to a prohibition of interrogation, unless the obligation to maintain confidentiality has been lifted.

(3) No one may be compelled to present or surrender an item that, at the time of the request for its presentation or surrender, could serve as evidence against them or against a close person [osoba blízká]. This does not affect provisions regarding the seizure of items, searches of dwellings, searches of non-residential premises and land, and personal searches.

(4)²⁴⁸ If necessary to prevent the frustration of forfeiture or confiscation of an item, the authorities involved in criminal proceedings as specified in paragraph 1 shall issue a warrant prohibiting the person from transferring or encumbering the seized item during the period of its retention. Any legal act performed in contravention of this prohibition is null and void, and the court shall take this nullity into account *ex officio*. The person concerned must be informed of this.

(5) The person who has produced or submitted an item for evidentiary purposes shall immediately receive a written receipt or a copy of the report from the authority conducting the procedure. The item shall be described therein with sufficient precision to ensure its identification.

(6) The authority involved in criminal proceedings that has received an item serving as evidence shall take it into escrow.

(7) A person whose item has been seized has the right to request its return at any time. The authority involved in criminal proceedings specified in paragraph 1 must decide on such a request without delay. If the request is denied, the person may resubmit it only after 30 days have elapsed from the date on which the decision became final, unless new grounds are presented within the repeated request.

ii. Withdrawal of an Item

- 55 The withdrawal of an item is a more intrusive protective measure, applied when a person who has a duty to present an item important for evidentiary purposes fails to do so voluntarily. The law requires that, if possible, an independent observer be present as a witness during the withdrawal. The warrant for withdrawal is considered a *sui generis* warrant (s. 119(1) and (2) CCP), against which no remedy is available.

²⁴⁸ (4) Je-li to potřebné pro účely zabránění zmaření propadnutí nebo zabrání věci, orgán činný v trestním řízení uvedený v odstavci 1 vydá příkaz, že osoba, jíž byla věc zajištěna, nesmí po dobu zajištění takovou věc převést na jinou osobu nebo ji zatížit. Právní jednání učiněné v rozporu s tímto zákazem je neplatné; soud k neplatnosti přihlédne i bez návrhu. O tom je třeba tuto osobu poučit.

(5) Osobě, která předložila nebo vydala věc, jež může sloužit pro důkazní účely, vydá orgán, který úkon provedl, ihned písemné potvrzení o převzetí věci nebo opis protokolu; věc v nich musí být dostatečně přesně popsána, tak, aby bylo možné určit její totožnost.

(6) Orgán činný v trestním řízení, kterému byla vydána věc, jež může sloužit pro důkazní účely, ji převezme do úschovy.

(7) Osoba, které byla věc zajištěna, má právo kdykoli žádat o vrácení takové věci. O takové žádosti musí orgán činný v trestním řízení uvedený v odstavci 1 neodkladně rozhodnout. Byla-li žádost zamítnuta, může ji tato osoba, neuvede-li v ní nové důvody, opakovat až po uplynutí 30 dnů od právní moci rozhodnutí.

In practice, the withdrawal of an item relevant to criminal proceedings often occurs during the implementation of other measures, such as a search of a dwelling or a personal search. In such cases, the search warrant includes both a summons to surrender the item and a warrant for its withdrawal (see s. 82(1) and (3) CCP).

56

Section 79 Withdrawal of an Item²⁴⁹

57

(1) If an item that may serve as evidence is not presented or handed over upon request by the person in possession of it, it may be seized by order of the presiding judge, or in pre-trial proceedings, by order of the public prosecutor or the law enforcement agency. The law enforcement agency is obliged to secure prior consent from the public prosecutor to issue such an order; however, if prior consent cannot be obtained and the matter is urgent, the law enforcement agency may issue the warrant without prior approval.

(2) If the authority that issued the seizure warrant does not carry out the seizure itself, the law enforcement agency shall execute it based on the warrant.

(3) Where possible, an independent observer shall be present during the seizure.

(4) The provisions of s. 78(4) to (7) shall apply *mutatis mutandis* to the seized item.

b) Seizure of Instruments, Proceeds of Crime, and Replacement Value

i. General Introduction

As mentioned before, it is not only for evidentiary purposes that items can be seized. This method is frequently employed in large-scale VAT investigations conducted by the EPPO.²⁵⁰ If facts established during criminal proceedings indicate that an item is an instrument or proceeds of criminal activity, a decision may be made to seize such an item (see ss. 79a–79g CCP). Once the seizure has been executed, the enforcement authority must serve the warrant on the person from whom the item was seized (see ss. 79b(1) CCP).

58

An instrument used in the commission of a criminal offence refers to an item designated for or used in the commission of a crime, including its fruits and benefits (s. 135a CC). **Proceeds of a crime** are understood as any economic advantage derived from a

59

²⁴⁹ § 79 Odnětí věci

(1) Nebyla-li věc, která může sloužit pro důkazní účely, na vyzvání předložena nebo vydána tím, kdo ji má u sebe, může mu být na příkaz předsedy senátu a v přípravném řízení na příkaz státního zástupce nebo policejního orgánu odňata. Policejní orgán potřebuje k vydání takového příkazu předchozí souhlas státního zástupce; bez předchozího souhlasu může být příkaz policejním orgánem vydán jen tehdy, jestliže nelze předchozího souhlasu dosáhnout a věc nesnese odkladu.

(2) Nevykoná-li orgán, který příkaz k odnětí věci vydal, odnětí věci sám, provede je na podkladě příkazu policejní orgán.

(3) K odnětí věci se podle možnosti přibere osoba, která není na věci zúčastněna.

(4) Na odňatou věc se obdobně použije § 78 odst. 4 až 7.

²⁵⁰ See for example “A criminal organization centered in Spain accused of VAT fraud of more than 25 million euros has been dismantled”. *Agencia Tributaria*. Available at: https://sede.agenciatributaria.gob.es/Sede/en_gb/Desarticulada_una_organizacion_criminal_centrada_en_Espana_acusada_de_un_fraude_de_IVA_de_mas_de_25_millones_de_euros.html. Accessed 11 January 2024.

criminal offence. These are further classified into direct proceeds [*bezprostřední výnos*, s. 135b(2) CC] and indirect proceeds [*zprostředkovaný výnos*, s. 135b(3) CC].

60 For the exact wording of the Criminal Code provisions on instruments and proceeds of crime, see Part B.III, Annex I: General Provisions of the Criminal Code.

61 Given the complexity and significance of this issue for the EPPO, the analysis will first outline the general legal framework before examining specific areas in detail. These include the seizure of funds in bank accounts; the standing of secured creditors in asset seizure; and the interaction between asset seizure and various forms of security, including civil law securities, criminal law measures and penalties.



The most relevant provisions concerning the regular operations of the EPPO on seizure measures are reproduced below. A full **verbatim reproduction**, including the Czech originals, is provided in Part B.III, Annex III: Seizure Measures.

62 Decisions to seize property take the form of a **resolution**, against which a **complaint** may be lodged **without suspensive effect**. The resolution must always clearly and consistently identify the **item** to avoid any confusion with other items. Additionally, the resolution **prohibits** the person from transferring the item to another person or from encumbering, damaging, or destroying it (the latter two prohibitions apply only if the item is tangible).

63 Therefore, one of the most significant effects of the resolution is that **any legal disposition made by the person** against whom the prohibitions are directed, **in contravention of the prohibitions in the resolution**, is *ex lege* void (s. 79e(1) CCP). In cases where any disposition of frozen assets is necessary, it is subject to the **approval of the competent authority conducting the criminal proceedings** (the public prosecutor during the pre-trial proceedings or the presiding judge during court proceedings, s. 79e(2) CCP).

64 If the seized item is **subject to registration in a public registry** (e.g. registration of rights to a trademark, or an entry in the land register), it is necessary to record in the relevant registry that the item has been seized for criminal proceedings.

65 The seizure of property may be **limited or revoked**, either at the request of the person concerned or *ex officio*. If a person's request for revocation is refused and they do not present new reasons, they may only resubmit their request after 30 days from the date the decision becomes final. This should not be confused with the complaint mentioned above.

Section 79a Seizing Instruments of a Crime, Proceeds of a Crime and a Replacement Value

(1) If established facts indicate that a specific item is an instrument or proceeds of criminal activity, the presiding judge or, in pre-trial proceedings, the public prosecutor or law enforcement agency may decide to seize the item. The law enforcement agency must obtain prior consent from the public prosecutor before issuing such a decision. However, in urgent cases where delay is not possible, prior consent is not required. In such cases, the law enforcement agency must submit its decision to the public prosecutor within 48 hours, who must either approve or revoke the decision. A complaint may be lodged against the decision to seize the item.

(2) The decision to seize property or accompanying documents must adequately and unambiguously specify the objects subject to seizure. If a right is being seized, it may also include rights that will arise in the future. The decision shall prohibit the person from whom the object was seized from transferring it to another party or encumbering it after the notification of the decision. If a tangible object is seized, the person is also prohibited from deliberately damaging or destroying it. If necessary for the enforcement or management of the seized object, the decision to seize property or a subsequent decision may impose further prohibitions or restrictions on the exercise of rights related to the seized object, including future rights. Additionally, the decision may require the submission of all documents or physical records necessary to assert certain rights over the seized object, with a warning regarding the consequences of failing to comply within the specified period (s. 66 and s. 79). The provisions governing the decision to seize property shall apply *mutatis mutandis* to any subsequent decision imposing additional prohibitions or restrictions.

(3) The person from whom the object was seized must, within 15 days of the notification of the decision, inform the authority conducting the criminal proceedings of any third-party rights related to the seized object, any other restrictions on its disposal, and, if a property right was seized, identify the entity obliged to provide corresponding performance. Failure to comply within the specified period shall have the consequences set out in s. 66.

(4) The authority that issued the decision to seize property shall take all necessary steps to enforce it.

(5) A complaint may be lodged against the decision to seize property.

Section 79e Effects of Seizure

(1) Any legal act performed by a person subject to the prohibitions set out in the decision to seize property in contravention of those prohibitions shall be null and void; the person must be informed of this consequence. The court shall take such nullity into account *ex officio*.

(2) A seized item may only be disposed of in the course of enforcement proceedings, a public auction, execution, or insolvency proceedings with the prior consent of the presiding judge, or in the pre-trial proceedings, of the public prosecutor. To satisfy claims subject to enforcement, public auction, execution, or insolvency proceedings, priority shall be given to assets not affected by the decision to seize property.

(3) If the transfer or establishment of a right in respect of a seized item requires registration in a record maintained under other legal provisions, the authority or person responsible for maintaining such a record may, after receiving the decision to seize property, register the right in respect of the seized item based on a legal act performed by the person from whom the item was seized, only with the prior consent of the presiding judge or – in the pre-trial proceedings – the prior consent of the public prosecutor.

(4) If, under the Cadastral Act, an application for the registration of rights to immovable property in the land register was submitted based on a legal act performed by the person from whom the immovable property was seized before the issuance of the seizure warrant, and if the competent authority had not issued a final decision on the application by the time the seizure warrant was issued, the application shall lose its legal effect as of the date the seizure warrant becomes final.

(5) If a claim in a bank account is seized, the seizure shall apply to the funds present in the account at the moment the bank or another entity authorised to maintain accounts for third parties receives the decision to seize property, up to the amount specified in the decision, including any related charges. If the amount specified in the decision to seize property exceeds the balance in the account at that moment, the seizure shall also extend to any funds subsequently credited to the account, up to the specified amount, including any related charges. Unless otherwise provided by law, from the moment the seizure warrant is delivered to the bank or other authorised entity, it shall be prohibited to dispose of the funds in the account up to the amount subject to seizure.

68 If the seizure pertains to a **movable item**, the provisions of ss. 78 and 79 CCP on seizing items for evidentiary purposes shall apply *mutatis mutandis*:

69

Section 79c Execution of Seizure of Movable Property

(1) Any person in possession of movable property that may be subject to seizure is obliged to surrender it upon request by the presiding judge, or in pre-trial proceedings, by the public prosecutor or the law enforcement agency. If the person fails to comply, the property may be withdrawn from their possession. The procedure for surrendering and withdrawing movable property shall be governed *mutatis mutandis* by ss. 78 and 79. [...]

(5) A decision on the seizure of movable property under s. 79a, concerning property that has been surrendered, withdrawn under paragraph 1, or left in place under paragraph 2, must be issued within 96 hours of the respective action. [...]

(7) Paragraphs 1 to 5 shall apply *mutatis mutandis* to any machinery or other fixed equipment that forms part of immovable property but is separable from it.

In the case of seizure of **immovable property**, the presiding judge and, in pre-trial proceedings, a judge may, upon the proposal of the public prosecutor, issue a warrant for its inspection. The purpose of the inspection is to ascertain the condition of the immovable property and assess the advisability of seizing it:

Section 79d Inspection of Immovable Property

(1) Based on a warrant for the inspection of immovable property issued by the presiding judge, or in pre-trial proceedings by a judge upon the proposal of the public prosecutor, the court, public prosecutor, or, upon their instruction, the law enforcement agency may conduct an inspection of immovable property and its accessories to assess its condition and determine the appropriateness of its seizure. The authority conducting the inspection shall inform the owner of the immovable property, or a person residing in the same household, as well as any person known to have rights to the property, of the time and place of the inspection. These persons are obliged to allow the inspection of the immovable property and its accessories.

(2) The inspection authority may involve other persons in the inspection if their participation is necessary, particularly for the valuation of the immovable property.

(3) If, during the inspection of immovable property, a movable item or a machine or other affixed equipment forming part of the immovable property and being separable is identified as meeting the conditions for seizure under s. 79a, the procedure set out in s. 79c(2) to (5) may be applied without the need for a warrant for a search of a dwelling or search of non-residential premises and land.

ii. Freezing of Funds in a Bank Account

Given that investigations led by the EPPO frequently involve white-collar crime, the freezing of financial assets held in bank accounts is a commonly used investigative measure. This chapter provides an overview of the legal framework governing such asset freezing under Czech criminal procedure, placing it within a broader context while clarifying its specific procedural implications. Although this measure is based on provisions previously discussed, it extends beyond them, offering a structured understanding of its application in practice.

Issuance and Notification of a Freezing Order

A **decision to freeze assets** is issued in the form of a **resolution** [*usnesení*]. This resolution is primarily **delivered to the bank** responsible for executing the measure. Only after the bank has complied with the order is the **account holder notified** of the freezing decision.

- 74 The account holder has the right to **challenge** the freezing order by lodging a complaint [*stížnost*]. However, such a complaint does not have a suspensive effect, meaning that the freezing remains in place until a final decision on its revocation or limitation is reached. The complaint must be filed within three days of receiving the resolution.
- 75 Apart from this statutory complaint, the account holder may at any time during criminal proceedings **request the revocation or limitation** of the freezing order by submitting a formal application. Unlike the complaint, this request is not subject to a statutory deadline. The only restriction is that if a previous request has been denied, a new request may be submitted only after 30 days, unless it is based on new grounds that were not considered in the initial decision [s. 79f(2) CCP].

Essential Requirements of a Freezing Order

- 76 To be valid, a **freezing order must include specific details**, such as:
- The exact bank account number
 - The name of the bank maintaining the account
 - The amount of funds to be frozen
- 77 In some cases, the resolution may **not specify a fixed amount** but instead freeze **the entire balance of the account** and **all incoming payments**. This practice is often justified on the grounds that at the early stages of **pre-trial proceedings**, it may not be possible to determine the exact amount to be seized – particularly if **the number of victims has not yet been determined**.
- 78 The resolution also includes **binding instructions and prohibitions**, directed both at:
- **The account holder**: they may be prohibited from disposing of, encumbering, damaging, or otherwise interfering with the frozen assets in a way that could jeopardise the purpose of the freezing measure.
 - **The bank**: which must implement the restrictions specified in the resolution, ensuring that the account is effectively immobilised.
- 79 Additionally, the **account holder is usually required to disclose any third-party rights** associated with the frozen assets. Failure to comply with this obligation may result in a **disciplinary fine of up to CZK 50,000** for individuals or **CZK 500,000** for legal persons.

Legal Purposes of Asset Freezing and Seizure

- 80 The freezing of assets serves as a procedural tool that authorities involved in criminal proceedings may use for multiple purposes. These purposes include:
- **Seizing evidence for subsequent proceedings** (s. 78 CCP) – Authorities involved in criminal proceedings may seize items to preserve evidentiary material for further criminal proceedings. However, this is generally not applicable in cases involving the

freezing of financial assets in bank accounts, which do not function as physical evidence.

- **Seizing instruments and proceeds of crime** (s. 79 CCP) – In contrast, the freezing of funds in a bank account falls under s. 79a CCP, which allows authorities to seize instruments, proceeds, or substitute assets derived from criminal activity. This category is particularly relevant in economic crime cases.
- **Ensuring compensation for victims** (s. 47(1) CCP) – Authorities may also use asset freezing to secure potential claims of victims in criminal proceedings. Assets can be preserved to ensure that victims can be compensated for damages resulting from the offence.
- **Providing resources for criminal penalties** (s. 334a CCP) – In cases where a monetary penalty is imposed through a final conviction, asset freezing can serve as a means to ensure the availability of funds for the execution of the penalty. This is particularly relevant when a monetary penalty [*peněžitý trest*] is imposed under s. 334a CCP or other related provisions.

In practice, authorities typically freeze instruments of crime, proceeds of crime, or substitute assets.

81

iii. Creditor Standing in Asset Seizure

When an asset subject to seizure is encumbered by a **security interest**, the **secured creditor** [*zástavní věřitel*] effectively assumes the position of a party whose property may be subject to confiscation. Consequently, such a creditor may be treated as an **interested party** [*zúčastněná osoba*] within the meaning of the Czech CCP, thereby acquiring the **corresponding procedural rights**. This is possible provided that they can demonstrate that such recognition is essential for the **exercise of their rights**, as supported also by case law of the Constitutional Court.²⁵¹

82

Although existing judicial decisions specifically address **secured creditors**, there is no fundamental reason why an **unsecured creditor** could not also seek recognition as an interested party, provided they can substantiate that such status is necessary for the enforcement of their rights. However, case law on this matter remains scarce.

83

From a procedural perspective, the recognition of a **creditor's rights** in seizure proceedings underscores the intersection between **criminal asset forfeiture** and **private property interests**. The evolving case law in this area suggests a broader interpretation of procedural rights, ensuring that third parties with legitimate claims are not disproportionately deprived of their ability to enforce them within the framework of criminal proceedings.

84

²⁵¹ Judgment of the Constitutional Court No III. ÚS 84/20 of 7 July 2020.

iv. Hierarchy of Asset Seizure: Criminal Law, Penalties and Creditors' Claims

- 85** The seizure of assets serves distinct legal purposes under **criminal law, civil law and sanctions law**. Each framework establishes specific rules for asset restraint, prioritising different objectives such as satisfaction of individual claims, enforcement of monetary penalties or the execution of international sanctions. This chapter examines the hierarchy of these seizure mechanisms, their interplay and the procedural rules governing conflicts between them.
- 86** With regard to **international sanctions**, asset freezing is governed by the Act on the Implementation of International Sanctions [zákon č. 69/2006 Sb., o provádění mezinárodních sankcí] and is typically ordered by the Financial Analytical Office [*Finanční analytický úřad*]. The purpose of sanctions-based freezing is primarily preventive rather than punitive, ensuring that funds or assets are not utilised in a manner contrary to international security measures or national interests.
- 87** When assets are subject to both criminal law freezing and sanctions-based freezing, **criminal seizure takes precedence**. This principle is derived from s. 12a of the Act on the Implementation of International Sanctions, which defines the effects of restrictions or prohibitions on the disposal of assets subject to international sanctions. The provision explicitly states that the effects of asset seizure under the CCP remain unaffected by the measures outlined in paragraphs 2 and 3 of the same provision.²⁵² However, once the criminal restraint is lifted, sanctions-based freezing may be applied independently.
- 88** Both criminal and sanctions-based asset restraint take precedence over civil law claims by creditors. If an asset is only temporarily frozen but later not subject to forfeiture, creditors may seek to recover claims after the restriction is lifted. Any potential disposition with the frozen assets requires the explicit consent of the relevant authorities. If an asset is ultimately confiscated as proceeds of crime, creditors may have limited recourse.

²⁵² **Section 12a Effects of Restrictions or Prohibitions on the Disposal of Assets Subject to International Sanctions**

(1) Any legal act involving the disposal of assets subject to international sanctions that impose restrictions or prohibitions on their disposal, where such an act contravenes these sanctions, shall be disregarded.

(2) Assets subject to international sanctions that impose restrictions or prohibitions on their disposal may be handled within public auctions or insolvency proceedings only with the prior approval of the Office. The enforcement of a decision or execution against such assets may only be carried out with the prior approval of the Office.

(3) If the Office considers it necessary to achieve the purpose of the restriction or prohibition on asset disposal, it shall inform other authorities or persons responsible under special statutes for record-keeping, supervision, or other obligations concerning the assets in question or their owner or holder. At the same time, these authorities or persons shall be required to immediately report any transactions involving such assets that could undermine the purpose of the restriction or prohibition. These authorities and persons are obliged to comply with such requests.

(4) The provisions of the CCP regarding the effects of asset seizure remain unaffected by paragraphs 2 and 3 of this section.

c) Seizure of Items to Secure the Claim of the Injured Party

The concept of securing the claims of injured parties in criminal proceedings involves the protection of individuals or entities who have suffered harm due to the offence under investigation. This includes both **material damage** [*majetková škoda*], **non-pecuniary damage** [*nemajetková újma*], as well as the **recovery of unjust enrichment** [*bezduvodné obohacení*].

If the injured party **properly joins the criminal proceedings** and formally asserts their **claim for compensation**, they may request that items belonging to the accused be seized up to the value of the damage suffered. This seizure ensures that, should the accused be found guilty, there will be assets available to satisfy the compensation claim.

Section 47²⁵³

(1) If damage or non-material harm has been caused to the injured party by a criminal offence, or if the accused has gained unjust enrichment at the expense of the injured party through such a criminal offence, a claim may be secured against the property of the accused up to the probable amount of damage or non-material harm or up to the probable extent of unjust enrichment. A claim that cannot be asserted in criminal proceedings cannot be secured. Property that is excluded from enforcement under a special legal regulation cannot be used for securing a claim.

(2) The presiding judge shall decide on the securing of a claim under paragraph 1 upon the proposal of the public prosecutor or the injured party, and in pre-trial proceedings, the public prosecutor shall decide upon the proposal of the injured party. In pre-trial proceedings, the public prosecutor may also secure the claim without a proposal from the injured party if it is necessary to protect their interests, especially if there is a risk of delay.

(3) If the injured party is aware that the accused owns immovable property or has certain movable property located outside their permanent or other residence, they shall indicate in the proposal for securing their claim for compensation for damage or non-material

²⁵³ It should be noted that the wording of s. 47 CCP was slightly amended with effect from 1 January 2025, replacing the term “the court” [*soud*] with “the presiding judge” [*předseda senátu*]. This change is reflected in both the English and Czech versions of the provision. For terminology related to judges, see Part B, Chapter 2.3.

§ 47

(1) Byla-li poškozenému způsobena trestným činem škoda nebo nemajetková újma, nebo získal-li obviněný takovým trestným činem na jeho úkor bezduvodné obohacení, lze nárok až do pravděpodobné výše škody nebo nemajetkové újmy nebo až do pravděpodobného rozsahu bezduvodného obohacení zajistit na majetku obviněného. Zajišťovat nelze nárok, který nelze v trestním řízení uplatnit. K zajištění nelze užít majetek, který je podle zvláštního právního předpisu vyloučen z výkonu rozhodnutí o zajištění.

(2) O zajištění podle odstavce 1 rozhoduje předseda senátu na návrh státního zástupce nebo poškozeného, v přípravném řízení státní zástupce na návrh poškozeného. V přípravném řízení může státní zástupce nárok zajistit i bez návrhu poškozeného, vyžaduje-li to ochrana jeho zájmů, zejména hrozí-li nebezpečí z prodlení.

(3) Je-li poškozenému známo, že obviněný je vlastníkem nemovité věci nebo má některou movitou věc umístěnou mimo místo jeho trvalého nebo jiného pobytu, uvede podle možností již v návrhu na zajištění svého nároku na náhradu škody nebo nemajetkové újmy nebo na vydání bezduvodného obohacení, kde taková věc je.

harm or for the surrender of unjust enrichment where such property is located, if possible.

(4)²⁵⁴ In the resolution on securing the claim, the presiding judge and, in pre-trial proceedings, the public prosecutor shall prohibit the accused from transferring or encumbering the property specified in the resolution and, if necessary, any property that will be listed during the enforcement of such a resolution after the notification of the decision. They shall also instruct the accused to inform the presiding judge and, in pre-trial proceedings, the public prosecutor within 15 days of the notification of the resolution and, for subsequently listed property, within the time limit set by them, whether and who has a pre-emption right or other rights over the seized property or whether any restriction applies to the right to dispose of it, and if a property right has been seized, who is the obliged person to provide the corresponding performance, with a warning of the consequences of failing to comply with such a request within the prescribed time limit (s. 66). If necessary for the purpose of securing the claim, the resolution on securing the claim or an additional resolution may prohibit or restrict the exercise of other rights related to the seized property, including future rights. Any legal action taken in violation of the prohibitions in the first and third sentences shall be null and void, and the court shall consider the invalidity even without a proposal; the accused must be informed of this.

(5) The property of the accused, which is subject to the resolution on seizure under paragraphs 1 and 2, may only be disposed of in the context of enforcement proceedings, public auction, execution, or insolvency proceedings with the prior consent of the presiding judge and, in pre-trial proceedings, the public prosecutor. Assets not affected by

²⁵⁴ (4) Předseda senátu a v přípravném řízení státní zástupce v usnesení o zajištění zakáže obviněnému, aby majetek uvedený v rozhodnutí o zajištění a případně též majetek, který bude při výkonu takového rozhodnutí sepsán, po oznámení usnesení převedl na jiného nebo jej zatížil anebo aby jej záměrně poškozoval nebo ničil. Dále mu uloží, aby předsedovi senátu a v přípravném řízení státnímu zástupci do 15 dnů od oznámení usnesení a u následně sepsaného majetku v jimi stanovené lhůtě sdělil, zda a kdo má k zajištěnému majetku předkupní nebo jiné právo nebo zda je jiným způsobem omezen výkon práva s ním nakládat, a bylo-li zajištěno majetkové právo, též kdo je osobou povinnou poskytnout odpovídající plnění, s upozorněním na následky nevyhovění takové výzvě ve stanovené lhůtě (§ 66). Je-li to zapotřebí pro účely zajištění, lze v usnesení o zajištění nebo i v dodatečném usnesení zakázat nebo omezit také výkon dalších práv souvisejících se zajištěným majetkem, a to včetně práv teprve v budoucnu vzniklých. Právní jednání učiněné v rozporu se zákazy uvedenými ve větě první a třetí je neplatné, přičemž soud k neplatnosti přihlédne i bez návrhu; o tom je třeba obviněného poučit.

(5) S majetkem obviněného, na který se vztahuje rozhodnutí o zajištění podle odstavců 1 a 2, lze v rámci výkonu rozhodnutí, veřejné dražby, exekuce nebo insolvenčního řízení nakládat jen po předchozím souhlasu předsedy senátu a v přípravném řízení státního zástupce. Na úhradu pohledávek, které jsou předmětem výkonu rozhodnutí, veřejné dražby, exekuce nebo insolvenčního řízení, se přednostně použije majetek nedotčený rozhodnutím o zajištění.

(6) Práva třetích osob k zajištěnému majetku lze uplatnit podle zvláštního právního předpisu.

(7) Poškozený musí být o zajištění jeho nároku vždy vyrozuměn s upozorněním na důvody, pro něž se zajištění podle § 48 odst. 1 zruší.

(8) Výkon rozhodnutí o zajištění nároku poškozeného a postup při správě zajištěného majetku stanoví zvláštní právní předpis. Při vrácení, vydání a jiném nakládání se zajištěnou věcí, která byla vydána nebo odňata, se postupuje přiměřeně podle ustanovení o vrácení, vydání a jiném nakládání s věcí důležitou pro trestní řízení.

the resolution on seizure shall be used primarily to satisfy claims subject to enforcement proceedings, public auction, execution, or insolvency proceedings.

(6) The rights of third parties to seized property may be asserted under a special legal regulation.

(7) The injured party must always be informed of the securing of their claim, with an explanation of the reasons why the seizure shall be cancelled under s. 48(1).

(8) The enforcement of the resolution on securing the claim of the injured party and the procedure for managing seized property shall be governed by a special legal regulation. The return, release, and other handling of seized items that have been surrendered or seized shall be carried out in accordance with the provisions on the return, release, and other handling of items important for criminal proceedings.

Section 47a²⁵⁵

(1) The presiding judge and, in pre-trial proceedings, the public prosecutor shall refrain from carrying out securing measures or shall cancel the seizure if the accused or another person with their consent deposits a monetary guarantee in the amount corresponding to the probable claim of the injured party for compensation for damage or non-material harm or for the surrender of unjust enrichment into the court's account at a financial institution. Such a person must be informed of the nature of the accusation and the facts that led or could lead to the seizure. If a lower monetary guarantee has been deposited, the presiding judge and, in pre-trial proceedings, the public prosecutor shall carry out seizure of the property of the accused to the extent that the probable claim of the injured party is not covered by the monetary guarantee.

²⁵⁵ It should be noted that the wording of s. 47a CCP was slightly amended with effect from 1 January 2025, replacing the term “the court” [*soud*] with “the presiding judge” [*předseda senátu*]. This change is reflected in both the English and Czech versions of the provision. For terminology related to judges, see Part B, Chapter 2.3.

§ 47a

(1) Předseda senátu a v přípravném řízení státní zástupce upustí od provedení zajišťovacích úkonů nebo zajištění zruší, pokud obviněný nebo s jeho souhlasem jiná osoba složí na účet soudu u peněžního ústavu peněžitou jistotu ve výši odpovídající pravděpodobnému nároku poškozeného na náhradu škody nebo nemajetkové újmy nebo na vydání bezdůvodného obohacení; jiná osoba musí být seznámena s podstatou obvinění a se skutečnostmi, které vedly nebo by mohly vést k zajištění. Byla-li složena peněžitá jistota nižší, předseda senátu a v přípravném řízení státní zástupce provede zajišťovací úkony na majetku obviněného v rozsahu, v jakém pravděpodobný nárok poškozeného na náhradu škody nebo nemajetkové újmy nebo na vydání bezdůvodného obohacení není zajištěn peněžitou jistotou.

(2) Peněžitou jistotu podle odstavce 1 předseda senátu a v přípravném řízení státní zástupce zruší nebo omezí, jestliže pominuly důvody pro zajištění nároku poškozeného nebo je zřejmé, že nárok na náhradu škody nebo nemajetkové újmy nebo na vydání bezdůvodného obohacení poškozenému v trestním řízení nelze přiznat nebo je podstatně nižší.

(3) Nerozhodne-li předseda senátu jinak, trvá peněžitá jistota podle odstavce 1 do právní moci odsuzujícího rozsudku. Byl-li takovým rozsudkem přiznán poškozenému nárok na náhradu škody nebo nemajetkové újmy nebo na vydání bezdůvodného obohacení, uhradí ji předseda senátu z peněžité jistoty.

(2) The monetary guarantee under paragraph 1 shall be cancelled or reduced by the presiding judge and, in pre-trial proceedings, the public prosecutor if the reasons for securing the injured party's claim have ceased or it is evident that the claim cannot be granted in criminal proceedings or is significantly lower.

(3) Unless the presiding judge decides otherwise, the monetary guarantee under paragraph 1 shall remain in effect until the final convicting judgment. If such a judgment grants the injured party a claim for compensation for damage or non-material harm or for the surrender of unjust enrichment, the presiding judge shall pay it from the monetary guarantee.

(4)²⁵⁶ A complaint²⁵⁷ is admissible against decisions under paragraphs 1 and 2, which has a suspensive effect.

Section 48²⁵⁸

(1) The presiding judge and, in pre-trial proceedings, the public prosecutor shall discontinue the seizure if:

- (a) the reason for which it was ordered has ceased to exist;
- (b) the criminal investigation has been finally discontinued or has ended with a final acquittal; or
- (c) four months have elapsed from the date on which the judgment convicting the accused became final, or from the date on which the decision to transfer the case to another authority became final.

(2) The seizure shall be reduced if it is found to be unnecessary to the extent ordered.

(3) For important reasons, the presiding judge and, in pre-trial proceedings, the public prosecutor may, upon the request of the accused, authorise the performance of an act relating to the seized property.

²⁵⁶ (4) Proti rozhodnutí podle odstavců 1 a 2 je přípustná stížnost, jež má odkladný účinek.

²⁵⁷ Please note the distinction between a complaint [*stížnost*] and a criminal complaint [*trestní oznámení*], as discussed under Part B.II, Art 26 EPPO Regulation, Chapter 2.2.7, letter c, i).

²⁵⁸ It should be noted that the wording of s. 48 CCP was slightly amended with effect from 1 January 2025, replacing the term “the court” [*soud*] with “the presiding judge” [*předseda senátu*]. This change is reflected in both the English and Czech versions of the provision. For terminology related to judges, see Part B, Chapter 2.3.

§ 48

(1) Předseda senátu a v přípravném řízení státní zástupce zajištění zruší,

a) pomine-li důvod, pro který bylo nařízeno,

b) bylo-li trestní stíhání pravomocně zastaveno nebo skončilo-li pravomocným zprošťujícím rozsudkem, nebo

c) uplynuly-li čtyři měsíce ode dne, kdy nabyl právní moci rozsudek, jímž byl obžalovaný uznán vinným, nebo ode dne, kdy nabylo právní moci usnesení, jímž byla věc postoupena jinému orgánu.

(2) Zajištění je třeba omezit, ukáže-li se, že ho není třeba v rozsahu, v němž bylo nařízeno.

(3) Z důležitých důvodů může předseda senátu a v přípravném řízení státní zástupce na návrh obviněného povolit provedení úkonu, který se týká zajištěného majetku.

(4) Obviněný má právo kdykoliv po právní moci usnesení o zajištění žádat o zrušení nebo omezení zajištění; o této žádosti předseda senátu a v přípravném řízení státní zástupce, který o ní rozhoduje, vyrozumí poškozeného, jehož nárok byl zajištěn. Byla-li žádost zamítnuta, může ji obviněný, neuvede-li v ní nové důvody, opakovat až po uplynutí 30 dnů od právní moci takového rozhodnutí.

(4) The accused has the right to request the revocation or limitation of the seizure at any time after the resolution on seizure has become final. The presiding judge and, in pre-trial proceedings, the public prosecutor shall notify the injured party whose claim has been secured of such a request. If the request has been rejected, the accused may only repeat it after 30 days have passed since the final decision, unless new grounds are provided.

Section 49²⁵⁹

A complaint²⁶⁰ is admissible against decisions under ss. 47 and 48, which has a suspensive effect concerning the discontinuance, limitation of seizure, or the request to authorise a legal act pertaining to the seized items.

Nota bene: Apart from that, another avenue exists for the injured party to recover the damage caused to them. Injured parties may recover compensation pursuant to the **Act on the Use of Financial Resources from Property Penalties Imposed in Criminal Proceedings and on Amendments to Certain Acts** [zákon č. 59/2019 Sb., o použití peněžních prostředků z majetkových trestních sankcí uložených v trestním řízení]. Under ss. 10–11, they can submit their claim to the Ministry of Justice against the amount collected by the Ministry from a criminal sanction. The amount recovered from the criminal sanction is reduced by the compensation due to the injured party. This creates a state-recognised claim against the convicted person, which the Ministry of Justice then enforces as a creditor.

1.2.4. Computer Data and Banking Account Data (Art 30(1)(d))

Provisions on obtaining computer data and banking account data appear in different parts of the CCP but are discussed together here, as they both fall under Art 30(1)(d) EPPO Regulation.

Before these are analysed, nonetheless, a brief note should be made on the final clause of Art 30(1)(d) – namely, the reference to “the exception of data specifically retained in accordance with national law pursuant to the second sentence of Art 15(1) of Directive 2002/58/EC of the European Parliament and of the Council”. It is important to note that Czech statutes do not include a specific measure adopted under this discretionary provision.

To determine the scope of available data, reference must be made to the Act on the Processing of Personal Data [zákon č. 110/2019 Coll., o zpracování osobních údajů],

²⁵⁹ § 49

Proti rozhodnutí podle § 47 a 48 je přípustná stížnost, jež má, pokud jde o zrušení zajištění, jeho omezení nebo povolení provedení úkonu, odkladný účinek.

²⁶⁰ Please note the distinction between a complaint [*stížnost*] and a criminal complaint [*trestní oznámení*], as discussed under Part B.II, Art 26 EPPO Regulation, Chapter 2.2.7, letter c, i).

and the Electronic Communications Act [zákon č. 127/2005 Sb., o elektronických komunikacích]. Under the latter, natural and legal persons operating public communication networks or providing publicly available electronic communications services are required to retain operational and location data generated or processed in the course of providing these services for a **period of six months**. After this period, the data must be destroyed unless **they have been provided to authorities** or a **preservation warrant has been issued pursuant to the Czech CCP**.

a) Securing Computer Data

- 95 Until the amendment to the Criminal Procedure Code No 287/2018 Coll. came into force, the Czech CCP did not contain any specific provisions aimed at seizing computer data or information carriers for evidentiary or other purposes. However, this amendment introduced new provision under s. 7b CCP, aligning Czech law with the Convention on Cybercrime, to which the Czech Republic is a signator.

The following provisions do not introduce new forms of seizing items for evidentiary or other purposes but rather describe how these methods are applied in practice to secure PC data or banking data. This is because the CCP contains few, if any, specific provisions governing these types of data.

96 Section 7b²⁶¹

(1) If it is necessary to prevent the loss, destruction, or alteration of data important for criminal proceedings that are stored in a computer system or on an information carrier, the person who holds or controls such data may be ordered to preserve it in an unchanged form for the period specified in the warrant and to take the necessary measures to prevent the disclosure of the fact that data retention has been ordered.

(2)²⁶² If it is necessary to prevent the continuation or recurrence of criminal activity, a person who holds or controls data stored in a computer system or on an information carrier may be ordered to prevent other persons from accessing such data.

²⁶¹ § 7b

(1) Je-li zapotřebí zabránit ztrátě, zničení nebo pozměnění dat důležitých pro trestní řízení, která jsou uložena v počítačovém systému nebo na nosiči informací, lze nařídit osobě, která uvedená data drží nebo je má pod svojí kontrolou, aby taková data uchovala v nezměněné podobě po dobu stanovenou v příkazu a učinila potřebná opatření, aby nedošlo ke zpřístupnění informace o tom, že bylo nařízeno uchování dat.

(2) Je-li to zapotřebí k zabránění pokračování v trestné činnosti nebo jejímu opakování, lze nařídit osobě, která drží nebo má pod svojí kontrolou data, která jsou uložena v počítačovém systému nebo na nosiči informací, aby znemožnila přístup jiných osob k takovým datům.

²⁶² (3) Příkaz podle odstavce 1 nebo 2 je oprávněn vydat předseda senátu a v přípravném řízení státní zástupce nebo policejní orgán. Policejní orgán potřebuje k vydání takového příkazu předchozí souhlas státního zástupce; bez předchozího souhlasu může být příkaz policejním orgánem vydán jen tehdy, jestliže nelze předchozího souhlasu dosáhnout a věc nesnese odkladu.

(4) V příkazu podle odstavce 1 nebo 2 musí být označena data, na která se příkaz vztahuje, důvod, pro který mají být data uchována nebo k nim má být znemožněn přístup, a doba, po kterou mají být tato data uchována nebo k nim má být znemožněn přístup, která nesmí být delší než 90 dnů. Příkaz musí obsahovat poučení o následcích neuposlechnutí příkazu.

(5) Orgán, který vydal příkaz podle odstavce 1 nebo 2, jej neprodleně doručí osobě, vůči které směřuje.

- (3) The warrant under paragraphs 1 or 2 may be issued by the presiding judge and, in pre-trial proceedings, by the public prosecutor or a law enforcement agency. The law enforcement agency requires prior consent from the public prosecutor to issue such a warrant. Without prior consent, the law enforcement agency may issue the warrant only if consent cannot be obtained in advance and the matter cannot be delayed.
- (4) The warrant under paragraphs 1 or 2 must specify the data to which it applies, the reason for which the data is to be stored or access to it prevented and the period during which the data must be stored or access to it denied, which must not exceed 90 days. The warrant must also include instructions on the consequences of non-compliance.
- (5) The authority that issued the warrant pursuant to paragraphs 1 or 2 shall immediately.

Despite this provision, the current CCP does not contain detailed rules specifically governing the seizure of electronic evidence or data from computer systems and their media. However, certain general provisions allow for the seizure of such evidence.

Similarly, ss. 78–79 CCP may be used for the physical seizure of computer equipment or the data itself. Additionally, ss. 82(1) and (2) and s. 83 CCP allow for the seizure of data carriers during a search, after which they may be subjected to expert examination. The possibility of securing data during a search was addressed by the Constitutional Court of the Czech Republic in Case No IV ÚS 3225/09 of 14 December 2011:

“The subject of interest of the police during the search of a dwelling was computer technology or an indefinite number of data carriers. Generally, as well as in this specific case, even if the person being searched offers to voluntarily hand over items, it cannot be guaranteed that they will hand over all data carriers. Therefore, given the specifics of the criminal activity under investigation, the actions of the law enforcement agency were sufficiently justified.”

97

98



b) Disclosure of Banking Account Data and Traffic Data

The Czech CCP relies on **general provisions** governing the **cooperation of state authorities** with authorities involved in criminal proceedings for obtaining bank account or traffic data. While s. 8(1) CCP establishes the fundamental principles of such cooperation, s. 8(2) CCP directly **regulates the acquisition of banking account data**, while s. 8(3) CCP **regulates the monitoring of the banking account**. This must therefore be clearly distinguished from s. 79a CCP, which permits the seizure of financial resources in a bank account but does not regulate the process of obtaining bank account or traffic data – often a prerequisite for such seizures or other investigative actions.

99

Authorities involved in criminal proceedings may request information protected by banking secrecy if necessary to clarify the circumstances of a criminal offence, locate assets for seizure, assess the financial situation of the accused, or enforce criminal penalties. The public prosecutor, and after filing an indictment, the presiding judge, may

100

request such data, including information from the register of investment instruments and book-entry securities. Monitoring of bank accounts may be ordered by the presiding judge – or, in pre-trial proceedings, a judge upon the public prosecutor’s request – for up to six months, with possible extensions upon judicial approval. Information obtained under these provisions may only be used for the criminal proceedings for which it was requested.

101

Section 8²⁶³

(1) State authorities, legal persons and natural persons are obliged to comply without undue delay with requests from authorities involved in criminal proceedings in the performance of their duties. Unless otherwise provided by a special regulation, this obligation applies even without compensation. State authorities are further required to immediately report to the public prosecutor or the law enforcement agency any facts indicating that a criminal offence has been committed.

(2) If necessary for properly clarifying circumstances indicating the commission of a criminal offence, determining the nature, scope, or location of assets for seizure, assessing the financial situation of the accused, or ensuring the enforcement of a criminal sanction, the public prosecutor – and, after an indictment or an application for a penalty, the presiding judge – may request information protected by banking secrecy, as well as data from the register of investment instruments and book-entry securities. For the purposes specified in the first sentence, an authority responsible for tracing criminal proceeds in the Czech Republic,²⁶⁴ as defined by EU regulations governing cooperation

²⁶³ § 8

(1) Státní orgány, právnické a fyzické osoby jsou povinny bez zbytečného odkladu, a nestanoví-li zvláštní předpis jinak, i bez úplaty vyhovovat dožadáním orgánů činných v trestním řízení při plnění jejich úkolů. Státní orgány jsou dále povinny neprodleně oznamovat státnímu zástupci nebo policejním orgánům skutečnosti nasvědčující tomu, že byl spáchán trestný čin.

(2) Jestliže je toho v trestním řízení třeba k řádnému objasnění okolností nasvědčujících tomu, že byl spáchán trestný čin, k zjištění povahy, rozsahu nebo umístění věci pro účely jejich zajištění, k zjištění majetkových poměrů obviněného nebo pro účely zajištění výkonu trestní sankce, může státní zástupce a po podání obžaloby nebo návrhu na potrestání předseda senátu požadovat údaje, které jsou předmětem bankovního tajemství, a údaje z evidence investičních nástrojů a zaknihovaných cenných papírů. Pro účely uvedené ve větě první může za podmínek stanovených zvláštním zákonem požadovat údaje, které jsou předmětem bankovního tajemství, také orgán vykonávající působnost úřadu pro vyhledávání majetku z trestné činnosti v České republice podle předpisu Evropské unie upravujícího spolupráci mezi úřady pro vyhledávání majetku z trestné činnosti. V řízení o trestném činu podle § 180 trestního zákoníku může orgán činný v trestním řízení vyžadovat individuální údaje získané podle zvláštního zákona pro statistické účely.

²⁶⁴ V trestním řízení, ve kterém lze uložit ochranné opatření zabránění části majetku, může státní zástupce a po podání obžaloby nebo návrhu na potrestání předseda senátu žádat od správce daně informace z rozhodnutí o stanovení daně z příjmů pro účely posouzení splnění podmínek pro uložení tohoto ochranného opatření nebo pro účely zajištění jeho výkonu; poskytnutí informací podle tohoto ustanovení není porušením povinnosti mlčenlivosti podle daňového řádu. Podmínky, za nichž může orgán činný v trestním řízení vyžadovat údaje získané při správě daní pro jiné účely, stanoví zvláštní zákon. Údaje získané podle tohoto ustanovení nelze využít pro jiný účel než pro trestní řízení, v jehož rámci byly vyžádány.

(3) Z důvodů uvedených v odstavci 2 může předseda senátu a v přípravném řízení na návrh státního zástupce soudce nařídit sledování bankovního účtu nebo účtu u osoby oprávněné k evidenci investičních nástrojů nebo

between asset tracing offices, may also request information protected by banking secrecy under the conditions set out by a special statute. In proceedings concerning a criminal offence under s. 180 CC, an authority involved in criminal proceedings may request individual data collected under a special statute for statistical purposes. In criminal proceedings where the imposition of a protective measure involving the confiscation of part of an estate is possible, the public prosecutor – and, after an indictment or an application for a penalty, the presiding judge – may request information from the tax administrator regarding decisions on income tax assessments to determine whether the conditions for imposing such a measure are met or to secure its enforcement. The provision of such information under this section does not constitute a breach of confidentiality obligations under the Tax Code. The conditions under which authorities involved in criminal proceedings may request information obtained during tax administration for other purposes shall be set by a special statute. Information obtained under this provision may not be used for any purpose other than the criminal proceedings for which it was requested.

(3) For the reasons stated in paragraph 2, the presiding judge – or, in pre-trial proceedings, a judge upon the request of the public prosecutor – may order the monitoring of a bank account or an account held with an entity authorised to maintain records of investment instruments or book-entry securities under other legal provisions, for a maximum period of six months. If the purpose of the account monitoring continues beyond this period, it may be extended for an additional six months, repeatedly if necessary, by a warrant from a judge of a higher court and, in pre-trial proceedings, upon the request of

zaknihovaných cenných papírů podle jiných právních předpisů, a to nejvýše po dobu šesti měsíců. Trvá-li účel, pro který bylo sledování účtu nařízeno, i po této době, může toto sledování prodloužit na základě příkazu soudce soudu vyššího stupně a v přípravném řízení na návrh státního zástupce soudce krajského soudu o dalších šest měsíců, a to i opakovaně. Údaje získané podle tohoto ustanovení nelze využít pro jiný účel než pro trestní řízení, v jehož rámci byly získány.

(4) Plnění povinností podle odstavce 1 lze odmítnout s odkazem na povinnost zachovávat tajnost utajovaných informací chráněných zvláštním zákonem nebo státem uloženou nebo uznanou povinnost mlčenlivosti; to neplatí, a) jestliže osoba, která tyto povinnosti má, by se jinak vystavila nebezpečí trestního stíhání pro neoznámení nebo nepřekažení trestného činu, nebo

b) při vyřizování dožadání orgánu činného v trestním řízení o trestném činu, kde dožadovaná osoba je současně oznamovatelem trestného činu.

Za státem uznanou povinnost mlčenlivosti se podle tohoto zákona nepovažuje taková povinnost, jejíž rozsah není vymezen zákonem, ale vyplývá z právního úkonu učiněného na základě zákona.

(5) Nestanoví-li zvláštní zákon podmínky, za nichž lze pro účely trestního řízení sdělovat informace, které jsou podle takového zákona utajovány, nebo na něž se vztahuje povinnost mlčenlivosti, lze tyto informace pro trestní řízení vyžadovat po předchozím souhlasu soudce. Tím není dotčena povinnost mlčenlivosti advokáta podle zákona o advokacii.

(6) Ustanovením odstavců 1 a 5 není dotčena povinnost zachovávat mlčenlivost uložená na základě vyhlášené mezinárodní smlouvy, kterou je Česká republika vázána.

(7) Každý je povinen zachovávat mlčenlivost o všem, co se dozvěděl v souvislosti se součinností požadovanou podle odstavců 1 až 3; povinností mlčenlivosti není vázán pro účely řízení před soudem nebo jiným orgánem, a to v rozsahu nezbytném pro ochranu jeho práv nebo pro výkon jeho povinností. O této povinnosti a o následcích spojených s jejím porušením musí být poučen.

the public prosecutor, by warrant from a regional court judge. Information obtained under this provision may not be used for any purpose other than the criminal proceedings in which it was collected.

(4) The obligations set out in paragraph 1 may be refused on the grounds of the duty to maintain the confidentiality of classified information protected by a special statute or a state-imposed or state-recognised duty of confidentiality. However, this does not apply if:

(a) the person subject to such a duty would otherwise expose themselves to criminal liability for failing to report or prevent a criminal offence; or

(b) the request concerns a criminal offence, and the person being asked to provide information is simultaneously the individual who reported the offence.

A duty of confidentiality recognised by the state, under this law, does not include obligations whose scope is not defined by law but rather arises from a legal act based on statutory provisions.

(5) Unless a special statute prescribes conditions under which confidential or classified information may be disclosed for the purposes of criminal proceedings, such information may only be requested with prior judicial approval. This does not affect the confidentiality obligation of attorneys under the Legal Profession Act.

(6) The provisions of paragraphs 1 and 5 do not affect confidentiality obligations imposed by an international treaty binding on the Czech Republic.

(7) Anyone who has acquired information in connection with cooperation under paragraphs 1 to 3 is obliged to maintain confidentiality regarding such information. However, this obligation does not apply in court proceedings.

- 102** The corresponding provision in the CCP, which governs the procedure for state authorities assisting criminal justice authorities upon request, is supplemented by the Act on the Central Register of Accounts [zákon č. 300/2016 Sb., o centrální evidenci účtů], which regulates access to data from the Central Register of Bank Accounts (chiefly ss. 6 et seq.).

103 **Section 6 Obtainment of Data from the Central Register of Accounts**

(1) The data from the Central Register of Accounts may be requested only by:

(a) an authority involved in criminal proceedings;

(b) the Financial Analysis Office;

(c) a body of the Financial Administration of the Czech Republic;

(d) a body of the Customs Administration of the Czech Republic;

(e) the intelligence service of the Czech Republic (hereinafter referred to as the “intelligence service”);

(f) the authority responsible for exercising the powers of the authority for the search of assets derived from criminal activities in the Czech Republic, in accordance with the European Union regulation governing cooperation between authorities in the search for

assets derived from criminal activities (hereinafter referred to as the “Authority for the Search for Assets from Criminal Activities”);

(g) the Ministry of Finance, pursuant to the Act on Coordination of Cooperation with the European Anti-Fraud Office.

(2) The provision of data from the Central Register of Accounts, which are subject to bank secrecy or the obligation to keep them secret according to the Act on Savings and Credit Cooperatives, may be requested by the authority listed in paragraph 1 (hereinafter referred to as the “Applicant”) if the conditions stipulated by special statutes authorising the applicant to request such data are met.

(3) The applicant must maintain a record of requests for data from the Central Register of Accounts, including the date of the request, information identifying the natural person who submitted the request on behalf of the applicant and the content of the request.

(4) The data recorded pursuant to paragraph 3 must be retained by the applicant for 10 years from the day following the date of submission of the request.

(5) If the applicant is the authority for tracing assets from criminal activity, it may request data from the Central Register of Accounts if such data are necessary for performing a specific task related to criminal activities, as outlined in Annex No 1 of the directly applicable legal regulation of the European Union governing Euro-pol or for responding to a reasoned request by Europol. Paragraph 2 does not apply in this case.

(6) The authority for tracing assets derived from criminal activities must maintain records of requests for data from the Central Register of Accounts pursuant to paragraph 3, including data identifying the natural person who ordered the request and of the recipient of the requested data.

1.2.5. Interception of Telecommunications Traffic (Art 30(1)(e))

This set of measures represents an investigative activity, the classification of which remains a subject of debate within academia. However, in terms of application, it clearly falls within the instances envisaged by Art 30(1)(e) EPPO Regulation. 104

Czech statutes recognise two distinct measures: **wiretapping and recording of telecommunications traffic** (s. 88 CCP) and **retrieval of telecommunications traffic data** (s. 88a CCP). 105

The conditions for these measures are stringent and specific. Such measures can only be ordered if these conditions are satisfied: 106

- criminal proceedings are pending for a felony (see s. 14(3) CC), i.e. a misdemeanour is not sufficient and at the same time
- law imposes a maximum penalty of at least 8 years’ imprisonment for that felony, or
- it is one of the enumerated offences, irrespective of the maximum penalty, or
- it is an offence which must be prosecuted under a declared international treaty.

- 107** The interception of communication between counsel and client is strictly prohibited and evidence thereof obtained null and void. A warrant for these measures must be issued in writing and justified.
- 108** The Czech Republic has notified an **exception** under Art 30(3) EPPO Regulation in conjunction with Art 117 EPPO Regulation. While measures under Art 30(1) are generally applicable to all offences with a maximum sentence of imprisonment of at least four years, the Czech CCP restricts the use of wiretapping and recording of telecommunications traffic to cases where the maximum sentence is at least eight years or to specifically designated offences carrying a lower maximum sentence, which, however, does not encompass the full four-year threshold. The Czech Republic decided to adhere to the provisions in CCP and notify an exception rather than to amend them.

a) Wiretapping and Recording of Telecommunications Traffic

- 109** The warrant must also specify the period during which the measure is to be carried out, which may not exceed four months. This period may be extended by successive four-month intervals. The wiretapping and recording warrant constitutes a *sui generis* decision and, as such, is not a resolution against which a complaint is admissible.
- 110** If the recordings of telecommunications traffic are to be used as evidence, they must be accompanied by a report detailing the place, time, manner and content of the recording, as well as the identity of the person who made the recording.

111 Section 88

(1)²⁶⁵ If criminal proceedings are being conducted for a crime punishable by a maximum sentence of imprisonment of at least eight years, or for the criminal offence of scheming

²⁶⁵ § 88

(1) Je-li vedeno trestní řízení pro zločin, na který zákon stanoví trest odnětí svobody s horní hranicí trestní sazby nejméně osm let, pro trestný čin pletichy v insolvenčním řízení podle § 226 trestního zákoníku, porušení předpisů o pravidlech hospodářské soutěže podle § 248 odst. 1 písm. e) a odst. 2 až 4 trestního zákoníku, zjednání výhody při zadání veřejné zakázky, při veřejné soutěži a veřejné dražbě podle § 256 trestního zákoníku, pletichy při zadání veřejné zakázky a při veřejné soutěži podle § 257 trestního zákoníku, pletichy při veřejné dražbě podle § 258 trestního zákoníku, neoprávněná činnost pro cizí moc podle § 318a trestního zákoníku, zneužití pravomoci úřední osoby podle § 329 trestního zákoníku, křivé obvinění podle § 345 odst. 3 až 5 trestního zákoníku, křivá výpověď a nepravdivý znalecký posudek podle § 346 odst. 3 až 5 trestního zákoníku, křivé tlumočení podle § 347 odst. 3 až 5 trestního zákoníku nebo pro jiný úmyslný trestný čin, k jehož stíhání zavazuje vyhlášená mezinárodní smlouva, může být vydán příkaz k odposlechu a záznamu telekomunikačního provozu, pokud lze důvodně předpokládat, že jím budou získány významné skutečnosti pro trestní řízení a nelze-li sledovaného účelu dosáhnout jinak nebo bylo-li by jinak jeho dosažení podstatně ztíženo. Odposlech a záznam telekomunikačního provozu provádí pro potřeby všech orgánů činných v trestním řízení Policie České republiky. Provádění odposlechu a záznamu telekomunikačního provozu mezi obhájcem a obviněným je nepřipustné. Zjistí-li policejní orgán při odposlechu a záznamu telekomunikačního provozu, že obviněný komunikuje se svým obhájcem, je povinen záznam odposlechu bezodkladně zničit a informace, které se v této souvislosti dozvěděl, nijak nepoužít. Protokol o zničení záznamu založí do spisu.

(2) Nařídí odposlech a záznam telekomunikačního provozu je oprávněn předseda senátu a v přípravném řízení na návrh státního zástupce soudce. Příkaz k odposlechu a záznamu telekomunikačního provozu musí být vydán

to defraud in insolvency proceedings (s. 226 CC), breach of competition law (s. 248(1)(e), (2), (3), or (4) CC), arranging an advantage in public procurement, public tenders and government auctions (s. 256 CC), scheming to defraud in public procurement and tenders (s. 257 CC), scheming to defraud at government auction (s. 258 CC), unlawful activity on behalf of a foreign power (s. 318a CC), abuse of official power (s. 329 CC), false accusation (s. 345 paragraphs 3 to 5 CC), false testimony and false expert opinion (s. 346 paragraphs 3 to 5 CC), false interpreting (s. 347 paragraphs 3 to 5 CC) or for another intentional crime, the investigation of which is required by a declared international treaty, a warrant for wiretapping and recording of telecommunications traffic may be issued if it can be reasonably assumed that significant facts relevant to the criminal proceedings will be obtained through such measures and if the intended purpose cannot be achieved by other means or if achieving it by other means would be significantly more difficult. Wiretapping and recording of telecommunications traffic is carried out for the purposes of all law enforcement agencies by the Police of the Czech Republic. Wiretapping and recording of telecommunications traffic between defence counsel and the accused is strictly inadmissible. If, during the course of wiretapping, the law enforcement agency discovers that the accused is communicating with their defence counsel, it must immediately destroy the recording of the wiretapped communication and refrain from using any information obtained in this context. A protocol on the destruction of the recording must be included in the case file.

(2) The presiding judge is authorised to issue a warrant for wiretapping and recording of telecommunications traffic. In pre-trial proceedings, such a warrant may be issued by a judge upon the proposal of the public prosecutor. A warrant for the wiretapping and

pisemně a musí být odůvodněn, včetně konkrétního odkazu na vyhlášenou mezinárodní smlouvu v případě, že se vede trestní řízení pro úmyslný trestný čin, k jehož stíhání tato mezinárodní smlouva zavazuje. V příkazu k odposlechu a záznamu telekomunikačního provozu musí být stanovena uživatelská adresa či zařízení a osoba uživatele, pokud je její totožnost známa, a doba, po kterou bude odposlech a záznam telekomunikačního provozu prováděn, která nesmí být delší než čtyři měsíce; v odůvodnění musí být uvedeny konkrétní skutkové okolnosti, které vydání tohoto příkazu, včetně doby jeho trvání, odůvodňují. Příkaz k odposlechu a záznamu telekomunikačního provozu se bezodkladně doručí policejnímu orgánu. V přípravném řízení opis příkazu k odposlechu a záznamu telekomunikačního provozu soudce bezodkladně zašle státnímu zástupci.

(3) Policejní orgán je povinen průběžně vyhodnocovat, zda i nadále trvají důvody, které vedly k vydání příkazu k odposlechu a záznamu telekomunikačního provozu. Pokud důvody pominuly, je povinen odposlech a záznam telekomunikačního provozu ihned ukončit, a to i před skončením doby uvedené v odstavci 2. Tuto skutečnost bezodkladně písemně oznámí předsedovi senátu, který příkaz k odposlechu a záznamu telekomunikačního provozu vydal, a v přípravném řízení rovněž státnímu zástupci a soudci.

(4) Na základě vyhodnocení dosavadního průběhu odposlechu a záznamu telekomunikačního provozu může soudce soudu vyššího stupně a v přípravném řízení na návrh státního zástupce soudce krajského soudu dobu trvání odposlechu a záznamu telekomunikačního provozu prodloužit, a to i opakovaně, vždy na dobu nejdéle čtyři měsíců.

(5) Bez příkazu k odposlechu a záznamu telekomunikačního provozu může orgán činný v trestním řízení nařídít odposlech a záznam telekomunikačního provozu, nebo jej provést i sám, je-li vedeno trestní řízení pro trestný čin obchodování s lidmi (§ 168 trestního zákoníku), svěření dítěte do moci jiného (§ 169 trestního zákoníku), omezování osobní svobody (§ 171 trestního zákoníku), vydírání (§ 175 trestního zákoníku), únosu dítěte a osoby stížené duševní poruchou (§ 200 trestního zákoníku), násilí proti skupině obyvatelů a proti jednotlivci (§ 352 trestního zákoníku), nebezpečného vyhrožování (§ 353 trestního zákoníku) nebo nebezpečného pronásledování (§ 354 trestního zákoníku), pokud s tím uživatel odposlouchávané stanice souhlasí.

recording of telecommunications traffic must be issued in writing, must be justified and must include a specific reference to the relevant international treaty if the criminal proceedings concern an intentional crime requiring investigation under that treaty. The warrant must specify the user's address or device, the identity of the user (if known) and the period during which the wiretapping and recording will be conducted, which may not exceed four months. The justification for the warrant must clearly state the specific factual circumstances warranting its issuance, including the reasons for the specified duration. The warrant must be delivered to the law enforcement agency without delay. In pre-trial proceedings, the judge must immediately send a copy of the warrant to the public prosecutor.

(3) The law enforcement agency is obliged to continuously assess whether the grounds for the issued warrant continue to exist. If the grounds cease to exist, the agency must immediately terminate the wiretapping and recording of telecommunications traffic, even if the specified period has not yet expired. The agency must notify the presiding judge who issued the warrant in writing and, in pre-trial proceedings, must also notify the public prosecutor and the judge.

(4) Based on an evaluation of the progress of the wiretapping and recording, the judge of a higher court, or in pre-trial proceedings, a regional court judge upon the proposal of the public prosecutor, may extend the duration of the wiretapping and recording, even repeatedly, for a maximum period of four months per extension.

(5) Without a warrant for wiretapping and recording of telecommunications traffic, the law enforcement agency may conduct wiretapping and recording or warrant it to be conducted if criminal proceedings are being conducted for the crime of human trafficking (s. 168 CC), child trafficking (s. 169 CC), restriction of personal liberty (s. 171 CC), extortion (s. 175 CC), abduction of a child or mentally disordered person (s. 200 CC), assaulting a group of persons or an individual (s. 352 CC), uttering dangerous threats (s. 353 CC) or stalking (s. 354 CC), if the user of the wiretapped station agrees.

(6)²⁶⁶ If a recording of telecommunications traffic is to be used as evidence, a protocol must be attached to it indicating the place, time, method and content of the recording,

²⁶⁶ (6) Má-li být záznam telekomunikačního provozu užit jako důkaz, je třeba k němu připojit protokol s uvedením údajů o místě, času, způsobu a obsahu provedeného záznamu, jakož i o orgánu, který záznam pořídil. Ostatní záznamy je povinen policejní orgán označit, spolehlivě uschovat tak, aby byla zajištěna ochrana před neoprávněným zneužitím záznamů, a v protokolu založeném do spisu poznamenat, kde jsou uloženy. V jiné trestní věci, než je ta, v níž byl odposlech a záznam telekomunikačního provozu proveden, lze záznam jako důkaz užit tehdy, pokud je v této věci vedeno trestní stíhání pro trestný čin uvedený v odstavci 1, nebo souhlasí-li s tím uživatel odposlouchávané stanice.

(7) Pokud při odposlechu a záznamu telekomunikačního provozu nebyly zjištěny skutečnosti významné pro trestní řízení, je policejní orgán po souhlasu soudu a v přípravném řízení státního zástupce povinen záznamy bezodkladně zničit po třech letech od pravomocného skončení věci. Byl-li policejní orgán vyrozuměn o podání mimořádného opravného prostředku v uvedené lhůtě, zničí záznamy o odposlechu po rozhodnutí o mimořádném opravném prostředku, případně až po novém pravomocném skončení věci. Protokol o zničení záznamu o odposlechu zašle

as well as the authority that conducted the recording. The law enforcement agency is required to label other recordings, store them securely to ensure protection against unauthorised misuse and note in the protocol where they are stored, which must be entered into the file. In a criminal case other than the one in which the wiretapping and recording of telecommunications traffic were carried out, the recording may be used as evidence if the investigation in that case concerns a criminal offence specified in paragraph 1, or if the user of the wiretapped station consents to its use.

(7) If no facts relevant to criminal proceedings were discovered during the wiretapping and recording of telecommunications traffic, the law enforcement agency is obliged to destroy the recordings after three years from the conclusion of the case, following the consent of the court or, the pre-trial proceedings, the public prosecutor. If the law enforcement agency is informed of the filing of an extraordinary remedy within the specified period, it must destroy the recordings after a decision on the extraordinary remedy or upon the new conclusion of the case. The protocol on the destruction of the recording must be sent by the law enforcement agency to the public prosecutor whose decision concluded the case and, in proceedings before the court, to the presiding judge of the first instance, to be included in the file.

(8) The public prosecutor or law enforcement agency whose decision concluded the case and, in proceedings before the court, the presiding judge of first instance after the conclusion of the case, is obliged to inform the person referred to in paragraph 2, if known, about the ordered wiretapping and recording of telecommunications traffic. The information must include the designation of the court that issued the warrant, the duration of the wiretapping and the date of its termination. The information must also include a notice on the right to submit, within six months from the date of receipt, a proposal to

policejní orgán státnímu zástupci, jehož rozhodnutím byla věc pravomocně skončena, a v řízení před soudem předsedovi senátu prvního stupně, k založení do spisu.

(8) Státní zástupce nebo policejní orgán, jehož rozhodnutím byla věc pravomocně skončena, a v řízení před soudem předseda senátu soudu prvního stupně po pravomocném skončení věci, informuje o nařízeném odposlechu a záznamu telekomunikačního provozu osobu uvedenou v odstavci 2, pokud je známa. Informace obsahuje označení soudu, který vydal příkaz k odposlechu a záznamu telekomunikačního provozu, délku trvání odposlechu a datum jeho ukončení. Součástí informace je poučení o právu podat ve lhůtě šesti měsíců ode dne doručení této informace Nejvyššímu soudu návrh na přezkoumání zákonnosti příkazu k odposlechu a záznamu telekomunikačního provozu. Předseda senátu soudu prvního stupně podá informaci bezodkladně po pravomocném skončení věci, státní zástupce, jehož rozhodnutím byla věc pravomocně skončena, bezodkladně po uplynutí lhůty pro přezkoumání jeho rozhodnutí nejvyšším státním zástupcem podle § 174a a policejní orgán, jehož rozhodnutím byla věc pravomocně skončena, bezodkladně po uplynutí lhůty pro přezkoumání jeho rozhodnutí státním zástupcem podle § 174 odst. 2 písm. e).

(9) Informaci podle odstavce 8 předseda senátu, státní zástupce nebo policejní orgán nepodá v řízení o zločinu, na který zákon stanoví trest odnětí svobody s horní hranicí trestní sazby nejméně osm let, spáchaném organizovanou skupinou, v řízení o trestném činu spáchaném ve prospěch organizované zločinecké skupiny, v řízení o trestném činu účasti na organizované zločinecké skupině (§ 361 trestního zákoníku), v řízení o trestném činu účasti na teroristické skupině (§ 312a trestního zákoníku) nebo pokud se na spáchání trestného činu podílelo více osob a ve vztahu alespoň k jedné z nich nebylo trestní řízení doposud pravomocně skončeno, nebo pokud je proti osobě, již má být informace sdělena, vedeno trestní řízení, anebo pokud by poskytnutím takové informace mohl být zmařen účel trestního řízení, včetně řízení uvedeného v odstavci 6, nebo by mohlo dojít k ohrožení bezpečnosti státu, života, zdraví, práv a svobod osob.

the Supreme Court to review the legality of the warrant for wiretapping and recording of telecommunications traffic. The presiding judge of the court of first instance must submit the information without delay after the final conclusion of the case; the public prosecutor whose decision concluded the case must do so without delay after the expiry of the period for the review of their decision by the supreme prosecutor pursuant to s. 174a; and the law enforcement agency whose decision concluded the case must act without delay after expiry of the period for review of its decision by the public prosecutor under s. 174(2)(e).

(9) The information required under paragraph 8 shall not be provided by the presiding judge, the public prosecutor, or the law enforcement agency in proceedings concerning a crime punishable by a maximum sentence of imprisonment of at least eight years, committed by an organised group, or in proceedings concerning a criminal offence committed for the benefit of an organised criminal group, or in cases involving participating in an organised crime group (s. 361 CC) or a terrorist group (s. 312a CC). The information shall also not be provided if several individuals participated in committing the crime and proceedings against at least one of them have not yet concluded, if criminal proceedings are being conducted against the person to whom the information would be disclosed, or if disclosure would thwart the purpose of the proceedings or endanger state security, life, health, or the rights and freedoms of individuals.

b) Retrieval of Telecommunications Traffic Data

- 112 In addition to the wiretapping and recording of **ongoing telecommunications traffic**, the CCP also empowers the authorities to obtain data on telecommunications traffic that has already taken place. According to the CCP, the obliged entity, i.e. the holder of a telecommunications licence, must provide data on past telecommunications traffic to the court or, in pre-trial proceedings, to the public prosecutor or law enforcement agency.

- 113 **Section 88a**
(1)²⁶⁷ If it is necessary for the purposes of criminal proceedings conducted for an intentional crime, for which the law stipulates a maximum sentence of imprisonment of at

²⁶⁷ § 88a

(1) Je-li třeba pro účely trestního řízení vedeného pro úmyslný trestný čin, na který zákon stanoví trest odnětí svobody s horní hranicí trestní sazby nejméně tři roky, pro trestný čin porušení tajemství dopravovaných zpráv (§ 182 trestního zákoníku), pro trestný čin podvodu (§ 209 trestního zákoníku), pro trestný čin neoprávněného přístupu k počítačovému systému a neoprávněného zásahu do počítačového systému nebo nosiče informací (§ 230 trestního zákoníku), pro trestný čin opatření a přechovávání přístupového zařízení a hesla k počítačovému systému a jiných takových dat (§ 231 trestního zákoníku), pro trestný čin nebezpečného vyhrožování (§ 353 trestního zákoníku), pro trestný čin nebezpečného pronásledování (§ 354 trestního zákoníku), pro trestný čin šíření poplašné zprávy (§ 357 trestního zákoníku), pro trestný čin podněcování k trestnému činu (§ 364 trestního zákoníku), pro trestný čin schvalování trestného činu (§ 365 trestního zákoníku), nebo pro úmyslný trestný čin, k jehož stíhání zavazuje vyhlášená mezinárodní smlouva, kterou je Česká republika vázána, zjistit údaje o telekomunikačním provozu, které jsou předmětem telekomunikačního tajemství anebo na něž se vztahuje ochrana osobních a

least three years, for the criminal offences of invasion of secrecy of correspondence (s. 182 CC), fraud (s. 209 CC), unauthorised access to computer systems and information media (s. 230 CC), procuring and possessing access devices and computer system passwords and other such data (s. 231 CC), uttering dangerous threats (s. 353 CC), stalking (s. 354 CC), spreading false information (s. 357 CC), incitement (s. 364 CC), advocating crime (s. 365 CC), for an intentional crime whose investigation is required by a declared international treaty binding upon the Czech Republic, to obtain data on telecommunications traffic that is subject to telecommunications secrecy or protected as personal or intermediary data and if the intended purpose cannot be achieved by other means or would otherwise be significantly more difficult, the chairman of the court shall issue a warrant for the transfer of such data in proceedings before the court. In pre-trial proceedings, a judge shall issue the warrant upon the proposal of the public prosecutor for transfer to the public prosecutor or the law enforcement agency. The warrant to obtain telecommunications traffic data must be issued in writing and justified, including a specific reference to the declared international treaty if the criminal proceedings concern an offence requiring investigation under that treaty. If the request pertains to a specific user, their identity must be stated in the warrant, if known.

(2) The public prosecutor or law enforcement agency whose decision concluded the matter and in proceedings before the court, the presiding judge of the court of first in-

zprostředkovacích dat a nelze-li sledovaného účelu dosáhnout jinak nebo bylo-li by jinak jeho dosažení podstatně ztíženo, nařídí v řízení před soudem jejich vydání soudu předseda senátu a v přípravném řízení nařídí jejich vydání státnímu zástupci nebo policejnímu orgánu soudce na návrh státního zástupce. Příkaz k zjištění údajů o telekomunikačním provozu musí být vydán písemně a odůvodněn, včetně konkrétního odkazu na vyhlášenou mezinárodní smlouvu v případě, že se vede trestní řízení pro trestný čin, k jehož stíhání tato mezinárodní smlouva zavazuje. Vztahuje-li se žádost ke konkrétnímu uživateli, musí být v příkazu uvedena jeho totožnost, je-li známa.

(2) Státní zástupce nebo policejní orgán, jehož rozhodnutím byla věc pravomocně skončena, a v řízení před soudem předseda senátu soudu prvního stupně po pravomocném skončení věci informuje o nařízeném zjišťování údajů o telekomunikačním provozu osobu uživatele uvedenou v odstavci 1, pokud je známa. Informace obsahuje označení soudu, který vydal příkaz k zjištění údajů o telekomunikačním provozu, a údaj o období, jehož se tento příkaz týkal. Součástí informace je poučení o právu podat ve lhůtě šesti měsíců ode dne doručení této informace Nejvyššímu soudu návrh na přezkoumání zákonnosti příkazu k zjištění údajů o telekomunikačním provozu. Informaci podá předseda senátu soudu prvního stupně bezodkladně po pravomocném skončení věci, státní zástupce, jehož rozhodnutím byla věc pravomocně skončena, podá informaci bezodkladně po uplynutí lhůty pro přezkoumání jeho rozhodnutí nejvyšším státním zástupcem podle § 174a a policejní orgán, jehož rozhodnutím byla věc pravomocně skončena, podá informaci bezodkladně po uplynutí lhůty pro přezkoumání jeho rozhodnutí státním zástupcem podle § 174 odst. 2 písm. e).

(3) Informaci podle odstavce 2 předseda senátu, státní zástupce nebo policejní orgán nepodá v řízení o zločinu, na který zákon stanoví trest odnětí svobody s horní hranicí trestní sazby nejméně osm let, spáchaném organizovanou skupinou, v řízení o trestném činu spáchaném ve prospěch organizované zločinecké skupiny, v řízení o trestném činu účasti na organizované zločinecké skupině (§ 361 trestního zákoníku), v řízení o trestném činu účasti na teroristické skupině (§ 312a trestního zákoníku) nebo pokud se na spáchání trestného činu podílelo více osob a ve vztahu alespoň k jedné z nich nebylo trestní řízení doposud pravomocně skončeno, nebo pokud je proti osobě, již má být informace sdělena, vedeno trestní řízení, anebo pokud by poskytnutím takové informace mohl být zmařen účel tohoto nebo jiného trestního řízení, nebo by mohlo dojít k ohrožení bezpečnosti státu, života, zdraví, práv nebo svobod osob.

(4) Příkazu podle odstavce 1 není třeba, pokud k poskytnutí údajů dá souhlas uživatel telekomunikačního zařízení, ke kterému se mají údaje o uskutečnění telekomunikačního provozu vztahovat.

stance after the conclusion of the case, is obliged to inform the user referred to in paragraph 1, if known, about the ordered recovery of telecommunications traffic data. The information must include the designation of the court that issued the warrant, as well as the period covered by the warrant. Additionally, the information must include instructions on the right to submit a proposal to the Supreme Court for a review of the legality of the warrant within six months from the date of delivery. The presiding judge of the court of first instance must provide the information without delay after the conclusion of the case, the public prosecutor whose decision concluded the case must act without delay after the expiry of the period for review by the supreme prosecutor under s. 174a and the law enforcement agency whose decision concluded the case must act without delay after the expiry of the period for review by the public prosecutor under s. 174(2)(e).

(3) The information required under paragraph 2 shall not be provided by the presiding judge, the public prosecutor, or the law enforcement agency in proceedings concerning a crime punishable by a maximum sentence of imprisonment of at least eight years, committed by an organised group, in proceedings concerning a criminal offence committed for the benefit of an organised criminal group, or in cases involving participating in an organised crime group (s. 361 CC) or a terrorist group (s. 312a CC). The information shall also not be provided if several individuals participated in committing the crime and proceedings against at least one of them have not yet concluded, if criminal proceedings are being conducted against the person to whom the information would be disclosed, or if disclosure would defeat the purpose of the proceedings or endanger state security, life, health, or the rights and freedoms of individuals.

(4) A warrant under paragraph 1 is not required if the user of the telecommunications device consents to the provision of the data relating to the telecommunications operation.

1.2.6. Detention, Opening, Substitution and Tracking of Shipments (Art 30(1)(f))

- 114 These items broadly correspond to Art 30(1)(f) EPPO Regulation, as they facilitate the tracing of an object through technical means. For these actions, the CCP provides a uniform definition of the term “shipment”.

115 Section 87c Common Provisions²⁶⁸

For the purposes of ss. 86–87c, a shipment is defined as any item being transported by any means, whether by post or by another person, including concealed carriage.

²⁶⁸ § 87c Společné ustanovení

Zásilkou ve smyslu § 86 až 87c se rozumí předmět dopravovaný jakýmkoliv způsobem, ať již s využitím pošty nebo jiné osoby, včetně dopravy skrytým způsobem.

The **detention** of a shipment constitutes one of the less serious of the four possible interferences with the secrecy of correspondence. Detention of a shipment is permissible under the conditions specified in the CCP: 116

Detention and Opening of Shipments, Their Substitution and Tracking 117

Section 86 Detention of a Shipment²⁶⁹

(1) If it is necessary in a criminal case to ascertain the contents of an undelivered postal or other shipment, or telegram in order to clarify a matter of significance to the criminal proceedings, the presiding judge or, in pre-trial proceedings, the public prosecutor may order the post office or the person responsible for transporting the shipment to hand it over to them or, in pre-trial proceedings, to the public prosecutor or the law enforcement agency.

(2) In the absence of a warrant under paragraph 1, a law enforcement agency may delay the shipment if the matter cannot be postponed and the warrant cannot be obtained in advance. In such cases, the law enforcement agency must notify the public prosecutor of the delay within 24 hours. If the warrant under paragraph 1 is not delivered to the post office or the person responsible for the shipment within three days, the shipment may no longer be delayed.

The detention of a shipment therefore applies to parcels originating from any sender, provided that the measure is always aimed at clarifying facts relevant to specific, individualised criminal proceedings. It is a *sui generis* decision, against which no remedy is admissible. 118

The **opening** of a shipment is a measure taken by the competent law enforcement agency and is governed by s. 87 CCP: 119

Section 87 Opening of a Shipment 120

(1)²⁷⁰ A shipment detained under s. 86(1) may be opened only by the presiding judge and, in pre-trial proceedings, by the public prosecutor or a law enforcement agency, with the consent of the judge.

²⁶⁹ § 86 Zadržení zásilky

(1) Je-li k objasnění skutečností důležitých pro trestní řízení v konkrétní věci nutno zjistit obsah nedoručených poštovních zásilek, jiných zásilek nebo telegramů, nařídí předseda senátu a v přípravném řízení státní zástupce, aby je pošta nebo osoba provádějící jejich přepravu vydaly jemu a v přípravném řízení buď státnímu zástupci nebo policejnímu orgánu.

(2) Bez nařízení uvedeného v odstavci 1 může být přeprava zásilky pozdržena na příkaz policejního orgánu, pokud věc nesnese odkladu a nařízení nelze předem dosáhnout. Policejní orgán je povinen o pozdržení zásilky do 24 hodin vyrozumět státního zástupce. Neobdrží-li pošta nebo osoba provádějící dopravu zásilek v takovém případě do tří dnů nařízení podle odstavce 1, nesmí dopravu zásilek dále zdržovat.

²⁷⁰ § 87 Otevření zásilky

(1) Zásilku vydanou podle § 86 odst. 1 může otevřít jen předseda senátu a v přípravném řízení se souhlasem soudce státní zástupce nebo policejní orgán.

(2) The opened shipment shall be delivered to the intended recipient. If the recipient's whereabouts are unknown and the shipment is not marked as "intended for their own hands", it shall be handed over to a family member. Otherwise, the shipment shall be returned to the sender. However, if there are reasonable grounds to believe that delivering the shipment would frustrate the purpose of the investigation or significantly hinder it, the shipment shall be retained on file. If necessary, the contents of the letter or telegram shall be communicated to the addressee. If the recipient's whereabouts are unknown and the shipment is not intended for them, notification shall be given to a family member.

(3) If the opening of a shipment proves unnecessary, it must immediately be returned to the addressee or sent back to the post office or issuing entity.

121 In contrast, the **substitution** of a shipment has a much narrower scope, limited to specific types of shipments. The purpose of substitution is to prevent the circulation of items that, by their nature, pose a particular danger if left uncontrolled in circulation. This measure is also intended to aid the detection of more serious crimes, often involving organised criminal groups or transnational elements. Substitution is a *sui generis* decision against which no remedy is admissible.

122 **Section 87a Substitution of Shipments**²⁷¹

(1) In the interest of identifying individuals involved in handling shipments containing narcotic drugs, psychotropic substances, precursors, poisons, nuclear or radioactive materials, counterfeit money and securities, firearms or weapons of mass effect, ammunition and explosives, or other items requires special authorisation for possession, as well as items intended for the commission of a criminal offence or derived from a criminal offence, the presiding judge and, in pre-trial proceedings, the public prosecutor with the consent of the judge, may order that the contents of such a shipment be substituted and that the altered shipment continue in transit.²⁷²

(2) Otevřená zásilka se odevzdá adresátovi, a není-li jeho pobyt znám a není-li zásilka určena do vlastních rukou, některému z jeho rodinných příslušníků; jinak se zásilka vrátí odesílateli. Je-li však obava, že odevzdáním zásilky by mohlo dojít ke zmaření nebo podstatnému ztížení účelu trestního stíhání, připojí se zásilka ke spisu; je-li to vhodné, oznámí se adresátovi obsah dopisu nebo telegramu. Není-li jeho pobyt znám a není-li zásilka určena do vlastních rukou, učiní se oznámení některému z jeho rodinných příslušníků.

(3) Zásilka, kterou nebylo uznáno za nutné otevřít, odevzdá se ihned adresátovi nebo se vrátí poště nebo osobě, která ji vydala.

²⁷¹ § 87a Záměna zásilky

(1) V zájmu zjištění osob podílejících se na nakládání se zásilkou obsahující omamné látky, psychotropní látky,²⁷² prekursory, jedy, jaderný materiál nebo radioaktivní látky, padělané peníze a padělané cenné papíry, střelné nebo hromadně účinné zbraně, střelivo a výbušniny nebo jinou věc, k jejímuž držení je třeba zvláštního povolení, věci určené ke spáchání trestného činu, anebo věci z trestného činu pocházející, může předseda senátu a v přípravném řízení se souhlasem soudce státní zástupce nařídít, aby byl obsah takové zásilky zaměněn za jiný a takto upravená zásilka byla předána k další přepravě.

(2) Záměnu provede policejní orgán, který o tom sepiše záznam a zabezpečí úschovu zaměněných věcí a materiálů. Se zaměněnými věcmi se nakládá jako s věcmi odňatými.

(2) The substitution shall be carried out by the law enforcement agency, which must draw up a record of the procedure and ensure the safe custody of the original items. The substituted items shall be treated as withdrawn items.

The desire to enhance international cooperation in combating organised crime led to the introduction of shipment **tracking**. Unlike the two previous measures, tracking may only be conducted during pre-trial proceedings.

123

Section 87b Tracked Shipment²⁷³

(1) In pre-trial proceedings, the public prosecutor may order that a shipment reasonably suspected of containing items specified in s. 87a be tracked if it is necessary to clarify the offence or identify all offenders, and if obtaining the required information would otherwise be ineffective or significantly more difficult. The tracking shall be carried out by a law enforcement agency under the instructions of the public prosecutor. During tracking, no measures for delivery or withdrawal of the shipment may be taken against the persons handling the tracked shipment. A report on the progress of the tracking shall be prepared, and, if necessary, a video or other recording shall also be made.

(2) If the law enforcement agency cannot obtain a warrant under paragraph 1 in advance due to urgency, it may commence tracking immediately, provided it notifies the public prosecutor without delay and proceeds in accordance with their instructions.

(3) The tracking shall be terminated by the law enforcement agency upon the warrant of the public prosecutor if it becomes apparent that continuing to handle the shipment poses a substantial risk to life or health, or a significant risk of property damage, or if it becomes clear that further tracking of the shipment is no longer feasible. If necessary, the law enforcement agency shall take measures to prevent further possession of the items forming the contents of the shipment when terminating the tracking.

124

1.2.7. Ancillary Measures: Means of Operational Search

The Czech CCP provides ancillary measures that EDPs of the Regional Offices may utilise to investigate suspected PIF offences. These measures are referred to in the CCP

125

²⁷³ § 87b Sledovaná zásilka

(1) Státní zástupce může v přípravném řízení nařídit, aby zásilka, u níž je důvodné podezření, že obsahuje věci uvedené v § 87a, byla sledována, jestliže je to třeba k objasnění trestného činu nebo odhalení všech jeho pachatelů a zjištění potřebných skutečností jiným způsobem by bylo neúčinné nebo podstatně ztížené. Sledování zásilky provede podle pokynu státního zástupce policejní orgán; vůči osobám, které se sledovanou zásilkou nakládají, přitom neprovádí žádné úkony směřující k vydání nebo odnětí věci. O průběhu sledování zásilky se sepíše protokol a podle potřeby se pořídí též obrazový nebo jiný záznam.

(2) Bez příkazu podle odstavce 1 může policejní orgán zahájit sledování zásilky, jestliže věc nesnese odkladu a příkazu nelze předem dosáhnout. O tomto úkonu státního zástupce bez odkladu vyrozumí a postupuje dále podle jeho pokynů.

(3) Sledování zásilky ukončí policejní orgán na příkaz státního zástupce, a je-li zřejmé, že nakládáním se zásilkou vzniká vážné nebezpečí života nebo zdraví, značné škody na majetku, anebo hrozí-li vážné nebezpečí, že takovou zásilku nebude možné dále sledovat, i bez takového příkazu. Podle potřeby současně s ukončením sledování zásilky učiní úkon směřující proti dalšímu držení věci, které tvoří obsah zásilky.

as **means of operational search** [*operativně pátrací prostředky*, see ss. 158b–158f CCP]. The use of means of operational search must exclusively **pursue the objective of obtaining facts relevant to criminal proceedings and may only be employed when other investigative measures have failed** (s. 158b(2) CCP).

- 126** The only measure that unequivocally falls under Art 30(1)(f) EPPO Regulation is s. 158d CCP (surveillance of persons and items). This position, adopted by the Czech government, is evident from the notified exception under Art 117 EPPO Regulation, which applies exclusively to s. 158d CCP (see below sub b)). However, since the other two measures – simulated transfer and the use of an agent – are arguably covered under Art 30(4) EPPO Regulation, they are also examined here to maintain structural coherence with the Czech CCP and ensure a comprehensive analysis.
- 127** They may be utilised only in proceedings involving suspicion of an **intentional offence** (s. 158b(1) *in fine* CCP).
- 128** The Czech Republic has notified an **exception** under Art 30(3) EPPO Regulation in conjunction with Art 117 EPPO Regulation. While the measures under Art 30(1) are generally applicable to offences carrying a maximum sentence of imprisonment of at least four years, means of operational search are restricted under s. 158b CCP to intentional crimes only, as previously stated. Consequently, even s. 158d CCP, which falls within the scope of Art 30(1)(f), **remains limited to intentional crimes under this exception, rather than applying the four-year threshold set out in the Regulation.**
- 129** Following the filing of an indictment, the competence to decide on their use is altered, in contrast to the provisions applicable during pre-trial proceedings. After the filing of an indictment, it falls within the competence of the **presiding judge of the first-instance court, who may authorise their application even without a request from the public prosecutor** (s. 158f CCP).
- 130** The statute distinguishes three principal means of operational search:
- a) Simulated Transfer**
- 131** This operative measure involves the pretended purchase, sale, or transfer of an object, including assets, under the conditions stipulated in s. 158c CCP:

132 **Section 158c Simulated Transfer**

(1)²⁷⁴ A simulated transfer refers to a pretended purchase, sale, or other transfer of the subject matter of a transaction, including the transfer of an item;

²⁷⁴ § 158c Předstíraný převod

(1) Předstíraným převodem se rozumí předstírání koupě, prodeje nebo jiného způsobu převodu předmětu plnění včetně převodu věci,

a) k jejímž držení je třeba zvláštního povolení,

- (a) the possession of which requires a special permit;
 - (b) the possession of which is prohibited;
 - (c) which is the proceeds of a criminal offence; or
 - (d) which is intended for the commission of a criminal offence.
- (2) A simulated transfer may only be conducted with the written permission of the public prosecutor.
- (3) If the situation is urgent, the simulated transfer may be executed without prior authorisation. In such cases, the law enforcement agency must request authorisation without delay and if it is not granted within 48 hours, the simulated transfer must be terminated and no information obtained during the process may be used.
- (4) A record of the simulated transfer must be made by the law enforcement agency and delivered to the public prosecutor within 48 hours.

b) Surveillance of Persons and Items

This operative measure involves the covert acquisition of information about individuals and objects through the use of technical or other means, subject to the conditions outlined in s. 158d CCP. Please note the different forms of authorisation required for surveillance under s. 158d(2) and s. 158d(3) CCP. As the measures under the latter provision are more intrusive, they require judicial authorisation.

133

Section 158d Surveillance of Persons and Items

(1)²⁷⁵ Surveillance of persons and items (hereinafter referred to as “surveillance”) refers to the covert acquisition of information about individuals and objects using technical or

134

b) jejíž držení je nepřipustné,

c) která pochází z trestného činu, nebo

d) která je určena ke spáchání trestného činu.

(2) Předstíraný převod lze uskutečnit pouze na základě písemného povolení státního zástupce.

(3) Nesnese-li věc odkladu, lze předstíraný převod provést i bez povolení. Policejní orgán je však povinen o povolení bezodkladně dodatečně požádat, a pokud je do 48 hodin neobdrží, je povinen provádění předstíraného převodu ukončit a informace, které se v této souvislosti dozvěděl, nijak nepoužít.

(4) O předstíraném převodu sepíše policejní orgán záznam, který do 48 hodin doručí státnímu zástupci.

²⁷⁵ § 158d Sledování osob a věcí

(1) Sledováním osob a věcí (dále jen „sledování“) se rozumí získávání poznatků o osobách a věcech prováděné utajovaným způsobem technickými nebo jinými prostředky. Pokud policejní orgán při sledování zjistí, že obviněný komunikuje se svým obhájcem, je povinen záznam s obsahem této komunikace zničit a poznatky, které se v této souvislosti dozvěděl, nijak nepoužít.

(2) Sledování, při kterém mají být pořizovány zvukové, obrazové nebo jiné záznamy, lze uskutečnit pouze na základě písemného povolení státního zástupce.

(3) Pokud má být sledováním zasahováno do nedotknutelnosti obydlí, do listovního tajemství nebo zjišťován obsah jiných písemností a záznamů uchovávaných v soukromí za použití technických prostředků, lze je uskutečnit jen na základě předchozího povolení soudce. Při vstupu do obydlí nesmějí být provedeny žádné jiné úkony než takové, které směřují k umístění technických prostředků.

(4) Povolení podle odstavců 2 a 3 lze vydat jen na základě písemné žádosti. Žádost musí být odůvodněna podezřením na konkrétní trestnou činnost a, jsou-li známy, též údaji o osobách či věcech, které mají být sledovány. V povolení musí být stanovena doba, po kterou bude sledování prováděno a která nesmí být delší než šest měsíců.

other means. If, during surveillance, a law enforcement agency discovers that the accused is communicating with their counsel, the agency must immediately destroy any recording of such communication and refrain from using any information obtained in connection with it.

(2) Surveillance that involves making sound, video, or other recordings may only be conducted with the written permission of the public prosecutor.

(3) If surveillance involves interference with the inviolability of the dwelling, the secrecy of correspondence, or the content of privately kept documents or records through the use of technical means, prior judicial authorisation is required. When entering a dwelling, no actions other than those necessary for placing technical means may be undertaken.

(4) Authorisation under paragraphs 2 and 3 may only be granted upon a written request, which must specify the suspected criminal activity, the persons or objects to be monitored (if known), and the duration of the surveillance, which must not exceed six months. This period may be extended by the issuing authority upon a new written request, for a maximum of six months per extension.

(5) If the matter cannot be delayed and it does not involve cases requiring judicial authorisation (paragraph 3), surveillance may begin without prior authorisation. However, the law enforcement agency must immediately seek subsequent authorisation and if it is not granted within 48 hours, the surveillance must be terminated, any recordings destroyed and the information obtained must not be used.

(6) Surveillance may be conducted without the authorisations required under paragraphs 2 and 3 if the person whose rights and freedoms are affected by the surveillance gives express consent. If such consent is later revoked, the surveillance must be terminated immediately.

Tuto dobu může ten, kdo sledování povolil, na základě nové žádosti písemně prodloužit vždy na dobu nejvýše šesti měsíců.

(5) Nesnese-li věc odkladu a nejde-li o případy uvedené v odstavci 3, lze sledování zahájit i bez povolení. Policejní orgán je však povinen o povolení bezodkladně dodatečně požádat, a pokud je do 48 hodin neobdrží, je povinen sledování ukončit, případný záznam zničit a informace, které se v této souvislosti dozvěděl, nijak nepoužít.

(6) Bez splnění podmínek podle odstavců 2 a 3 lze sledování provést, pokud s tím výslovně souhlasí ten, do jehož práv a svobod má být sledováním zasahováno. Je-li takový souhlas dodatečně odvolán, sledování se neprodleně zastaví.

(7) Má-li být záznam pořízený při sledování použit jako důkaz, je třeba k němu připojit protokol s náležitostmi uvedenými v § 55 a 55a.

(8) Pokud nebyly při sledování zjištěny skutečnosti důležité pro trestní řízení, je nutno záznamy předepsaným způsobem zničit.

(9) Provozovatelé telekomunikační činnosti, jejich zaměstnanci a jiné osoby, které se na provozování telekomunikační činnosti podílejí, jakož i pošta nebo osoba provádějící dopravu zásilek jsou povinny bezúplatně poskytovat policejnímu orgánu provádějícímu sledování podle jeho pokynů nezbytnou součinnost. Přitom se nelze dovolávat povinnosti mlčenlivosti stanovené zvláštními zákony.

(10) V jiné trestní věci, než je ta, v níž bylo sledování za podmínek uvedených v odstavci 2 provedeno, lze záznam pořízený při sledování a připojený protokol použít jako důkaz jen tehdy, je-li i v této věci vedeno řízení o úmyslném trestném činu nebo souhlasí-li s tím osoba, do jejíž práv a svobod bylo sledováním zasahováno.

(7) If a recording made during surveillance is to be used as evidence, it must be accompanied by a protocol that meets the requirements set out in ss. 55 and 55a CCP.

(8) If no facts relevant to criminal proceedings are discovered during surveillance, the recordings must be destroyed in the prescribed manner.

(9) Telecommunications service operators, their employees and other persons involved in telecommunications activities, as well as postal service providers or individuals engaged in parcel transport, are obliged to cooperate with the law enforcement agency conducting the surveillance, in accordance with its instructions, free of charge. They cannot invoke confidentiality obligations under specific laws as a reason to refuse co-operation.

(10) A recording made during surveillance, along with the attached protocol, may only be used as evidence in a different criminal case if proceedings in that case concern an intentional crime or if the person whose rights and freedoms were affected by the surveillance consents to its use.

c) Use of an Agent

In cases involving expressly mentioned offences, the final means of operational search, namely the **use of an agent**, may be applied. 135

An **agent** is a member of the Police of the Czech Republic or the General Inspection of Security Forces who performs tasks assigned by the supervising law enforcement agency, typically operating under the concealment of their true purpose. 136

Such an agent shall not be criminally liable for the offence of participation in an organised criminal group or for the offences exhaustively listed in s. 363 CC, provided that the specified conditions are met. For further details on the use of an agent, see s. 158e CCP: 137

Section 158e Use of an Agent

(1)²⁷⁶ If criminal proceedings are conducted for a crime punishable by a maximum sentence of imprisonment of at least eight years, for a crime committed for the benefit of 138

²⁷⁶ § 158e Použití agenta

(1) Je-li vedeno trestní řízení pro zločin, na který zákon stanoví trest odnětí svobody s horní hranicí trestní sazby nejméně osm let, pro trestný čin spáchaný ve prospěch organizované zločinecké skupiny, pro trestný čin pletichy v insolvenčním řízení podle § 226 trestního zákoníku, porušení předpisů o pravidlech hospodářské soutěže podle § 248 odst. 1 písm. e) a odst. 2 až 4 trestního zákoníku, zjednání výhody při zadání veřejné zakázky, při veřejné soutěži a veřejné dražbě podle § 256 trestního zákoníku, pletichy při zadání veřejné zakázky a při veřejné soutěži podle § 257 trestního zákoníku, pletichy při veřejné dražbě podle § 258 trestního zákoníku, zneužití pravomoci úřední osoby podle § 329 trestního zákoníku, přijetí úplatku podle § 331 trestního zákoníku, podplacení podle § 332 trestního zákoníku, nepřímého úplatkářství podle § 333 trestního zákoníku nebo pro jiný úmyslný trestný čin, k jehož stíhání zavazuje vyhlášená mezinárodní smlouva, kterou je Česká republika vázána, je policejní orgán, pokud jím je útvar Policie České republiky nebo Generální inspekce bezpečnostních sborů, oprávněn použít agenta.

an organised criminal group, or for offences such as scheming to defraud in insolvency proceedings (s. 226 CC), breach of competition law (s. 248(1)(e) and paragraphs 2 to 4 CC), arranging an advantage in public procurement, public tenders and government auctions (s. 256 CC), scheming to defraud in public procurement and tenders (s. 257 CC), scheming to defraud at government auction (s. 258 CC), abuse of official power (s. 329 CC), accepting a bribe (s. 331 CC), bribery (s. 332 CC), trading in influence (s. 333 CC), or for another intentional crime that the Czech Republic is obliged to prosecute under a declared international treaty, the law enforcement agency, if it is a department of the Police of the Czech Republic or the General Inspection of Security Forces, is authorised to use an agent.

(2) An agent is a member of the Police of the Czech Republic or the General Inspection of Security Forces who carries out tasks assigned by the law enforcement agency, typically by concealing the true purpose of their activities. If necessary for the agent's deployment, preparation, or protection, their identity may be concealed by:

- (a) Creating a fictitious identity and entering personal data derived from it into information systems operated under special statutes;
- (b) Engaging in economic activities that require special authorisation, permits, or registration;
- (c) Concealing their affiliation with the Police of the Czech Republic or the General Inspection of Security Forces.

(2) Agentem je příslušník Policie České republiky nebo Generální inspekce bezpečnostních sborů plnící úkoly uložené mu řídicím policejním orgánem, vystupující zpravidla se zastíráním skutečného účelu své činnosti. Je-li to k použití agenta, jeho přípravě nebo k jeho ochraně nutné, je k zastírání jeho totožnosti možné

- a) vytvořit legendu o jiné osobní existenci a osobní údaje vyplývající z této legendy zavést do informačních systémů provozovaných podle zvláštních zákonů,
- b) provádět hospodářské činnosti, k jejichž vykonávání je třeba zvláštní oprávnění, povolení či registrace,
- c) zastírat příslušnost k Policii České republiky nebo ke Generální inspekci bezpečnostních sborů.

(3) Orgány veřejné správy jsou povinny poskytnout Policii České republiky a Generální inspekci bezpečnostních sborů bez odkladu potřebnou součinnost při plnění oprávnění uvedených v odstavci 2.

(4) Použití agenta povoluje na návrh státního zástupce vrchního státního zastupitelství nebo na návrh evropského pověřeného žalobce soudce vrchního soudu, v jehož obvodu je státní zástupce, podávající návrh, činný. Návrh na použití agenta může podat i evropský žalobce; v takovém případě povoluje použití agenta soudce vrchního soudu, v jehož obvodu by byl činný evropský pověřený žalobce, který by byl jinak příslušný k výkonu dozoru nad zachováváním zákonnosti v přípravném řízení. V povolení musí být uveden účel použití a doba, po kterou bude agent použit, a údaje umožňující identifikaci agenta. Na základě nového návrhu, obsahujícího vyhodnocení dosavadní činnosti agenta, lze dobu povolení prodloužit, a to i opakovaně.

(5) Ke sledování osob a věcí v rozsahu uvedeném v § 158d odst. 2 a k provedení předstíraného převodu podle § 158c agent nepotřebuje další povolení.

(6) Agent je povinen při své činnosti volit takové prostředky, které jsou způsobilé ke splnění jeho služebního úkolu a jimiž není jiným osobám způsobována újma na jejich právech nad míru nezbytně nutnou. Jiné povinnosti podle zvláštního zákona upravujícího postavení příslušníků Policie České republiky nebo podle zvláštního zákona upravujícího postavení příslušníků Generální inspekce bezpečnostních sborů nemá.

(7) Státní zástupce je povinen od příslušného policejního orgánu vyžadovat údaje potřebné pro posouzení, zda trvají důvody pro použití agenta a zda je jeho činnost v souladu se zákonem. Tyto údaje je povinen pravidelně, nejméně jednou za tři měsíce, posuzovat, a pominou-li důvody pro použití agenta, dá policejnímu orgánu pokyn k bezodkladnému ukončení činnosti agenta. Policejní orgán je povinen předložit státnímu zástupci záznam o výsledku použití agenta.

- (3) Public administration bodies are obliged to provide the Police of the Czech Republic and the General Inspection of Security Forces with the necessary cooperation, without delay, to enable them to exercise the authorisations specified in paragraph 2.
- (4) The use of an agent requires prior authorisation, which is granted upon the proposal of the public prosecutor from the High Prosecutor's Office or a European Delegated Prosecutor. Authorisation must be obtained from a judge of the High Court in whose district the public prosecutor submitting the proposal is active. If the proposal is submitted by a European Prosecutor, authorisation must be granted by a judge of the High Court in the district where the European Delegated Prosecutor responsible for supervising the legality of pre-trial proceedings is active. The authorisation must specify the purpose of the agent's use, the period of deployment and information enabling the agent to be identified. Based on a new proposal, containing an evaluation of the agent's previous activities, the period of authorisation may be extended multiple times.
- (5) The agent does not require separate authorisation to monitor persons and objects in accordance with s. 158d(2) or to conduct a simulated transfer under s. 158c.
- (6) During their activities, the agent must employ means that are appropriate for fulfilling their official task and that do not infringe upon the rights of others beyond what is strictly necessary. The agent is exempt from other obligations under the special statute governing the status of members of the Police of the Czech Republic or the General Inspection of Security Forces.
- (7) The public prosecutor must obtain the necessary data from the competent law enforcement agency to assess whether the conditions for the agent's continued deployment are still met and whether their activities comply with the law. The public prosecutor is required to conduct regular reviews of this data at least once every three months. If the reasons for the agent's use no longer exist, the public prosecutor must immediately order the termination of the agent's activities. The law enforcement agency is obliged to provide the public prosecutor with a record of the results of the agent's deployment.

1.3. Minimum Investigative Measures and Remedies under CCP

Although every effort has been made to include the relevant provisions and details concerning Art 30(1) EPPO Regulation and the corresponding measures under the CCP, the following overview highlights the key elements relevant to decisions and available remedies for both the prosecution and the defence.

Table 15: Investigative Measures Under Art 30(1) EPPO Regulation

Investigative measure	Form of decision	Remedy and time limit	Other forms of defence and frequency of application
Search of a dwelling [domovní prohlídka]	Warrant [příkaz] as a form of decision <i>sui</i>	No	-

Art 30 EPPO Regulation

(s. 83 CCP)	<i>generis</i> [rozhodnutí <i>sui generis</i>]		
Search of non-residential premises and land [prohlídka jiných prostor a pozemků] (s. 83a CCP)	Warrant [příkaz] as a form of decision <i>sui generis</i> [rozhodnutí <i>sui generis</i>]	No	-
Entry into dwelling, non-residential premises and land [vstup do obydli, jiných prostor a pozemků] (s. 83c CCP)	Measure [opatření] as a form of decision <i>sui generis</i> [rozhodnutí <i>sui generis</i>]	No	-
Personal search [osobní prohlídka] (s. 83b CCP)	Warrant [příkaz] as a form of decision <i>sui generis</i> [rozhodnutí <i>sui generis</i>]	No	-
Presentation of an item [předložení věci] (s. 78 CCP)	Measure [opatření] as a form of decision <i>sui generis</i> [rozhodnutí <i>sui generis</i>]	No	Request for return of the item [žádost o vrácení věci]; once every 30 days ²⁷⁷
Surrender of an item [vydání věci] (s. 78 CCP)	Measure [opatření] as a form of decision <i>sui generis</i> [rozhodnutí <i>sui generis</i>]	No	Request for return of the item [žádost o vrácení věci]; once every 30 days ²⁷⁸
Withdrawal of an item [odnětí věci] (s. 79 CCP)	Warrant [příkaz] as a form of decision <i>sui generis</i> [rozhodnutí <i>sui generis</i>]	No	Request for return of the item [žádost o vrácení věci]; once every 30 days ²⁷⁹
Seizure of an item [zajištění věci] (ss. 79a et seq. CCP)	Resolution [usnesení]	Yes; complaint [stížnost]; 3 days ²⁸⁰	Request for return of the item [žádost o vrácení věci]; once every 30 days ²⁸¹

²⁷⁷ Please note the time limit set out in s. 78(7): A person whose property has been seized has the right to request its return at any time. The law enforcement agency must decide on such a request without delay. If the request is denied, the person may submit a new request only after 30 days from the date the decision becomes final, unless they present new grounds for the request.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ The complaint does not suspend the effect of the decision.

²⁸¹ Please note the procedure set out in s. 79f(2) CCP: A person whose property has been withdrawn has the right to request the revocation or limitation of the seizure at any time after the decision on seizure becomes final. The law enforcement agency must decide on such a request without delay. If the request is denied, the person may submit a new request only after 30 days from the date the decision becomes final, unless they present new grounds for the request.

Seizure to secure a claim of the injured party [zajištění nároku poškozeného] (s. 47 et seq. CCP)	Resolution [<i>usnesení</i>]	Yes; complaint [<i>stížnost</i>]; 3 days ²⁸²	Request for return of the item [<i>žádost o vrácení věci</i>]; once every 30 days ²⁸³
Securing computer data [zajištění počítačových dat] (s. 7b CCP)	Warrant [<i>příkaz</i>] as a form of decision <i>sui generis</i> [<i>rozhodnutí sui generis</i>]	No	-
Disclosure of banking account data and traffic data [sdělení informací podléhajících bankovnímu tajemství] (s. 8(2) CCP)	Request [<i>žádost</i>] as a form of decision <i>sui generis</i> [<i>rozhodnutí sui generis</i>]	No	-
Wiretapping and recording of telecommunications [odposlech a záznam telekomunikačního provozu] (s. 88 CCP)	Warrant [<i>příkaz</i>] as a form of decision <i>sui generis</i> [<i>rozhodnutí sui generis</i>]	No ²⁸⁴	-
Retrieval of telecommunications traffic data [zjištění údajů o telekomunikačním provozu] (s. 88a CCP)	Warrant [<i>příkaz</i>] as a form of decision <i>sui generis</i> [<i>rozhodnutí sui generis</i>]	No ²⁸⁵	-
Detention of a shipment [zadržení zásilky] (s. 86 CCP)	Warrant [<i>příkaz</i>] as a form of decision <i>sui generis</i> [<i>rozhodnutí sui generis</i>]	No	-
Opening of a shipment [otevření zásilky] (s. 87 CCP)	Measure [<i>opatření</i>] as a form of decision <i>sui generis</i> [<i>rozhodnutí sui generis</i>]	No	-

²⁸² The complaint does not suspend the effect of the decision.

²⁸³ Please note the procedure set out in s. 48(4) CCP: The accused has the right to request the revocation or limitation of the seizure at any time after the decision on seizure becomes final. The presiding judge, and in the pre-trial stage, the public prosecutor responsible for deciding on the request, must notify the injured party whose claim has been secured. If the request is denied, the accused may submit a new request only after 30 days from the date the decision becomes final, unless they present new grounds for the request.

²⁸⁴ Nonetheless, once the wiretapping and recording of telecommunications traffic has concluded, the user of the monitored communication must be informed of the ordered wiretapping and recording. However, in specific circumstances, the presiding judge, public prosecutor, or law enforcement agency is not required to provide this notification in proceedings concerning a felony punishable by a maximum sentence of at least eight years' imprisonment, if committed by an organised group, as well as in cases involving a criminal offence committed for the benefit of an organised criminal group or the criminal offence of participation in an organised criminal group. For a detailed interpretation, please refer to s. 88(8) and (9) CCP, as translated in Chapter 1.2.5.

²⁸⁵ Ibid., please consult s. 88a(2) and (3) CCP, as translated in Chapter 1.2.5.

Art 30 EPPO Regulation

Substitution of a shipment [<i>záměna zásilky</i>] (s. 87a CCP)	Warrant [<i>příkaz</i>] as a form of decision <i>sui generis</i> [<i>rozhodnutí sui generis</i>]	No	-
Tracking of a shipment [<i>sledování zásilky</i>] (s. 87b CCP)	Warrant [<i>příkaz</i>] as a form of decision <i>sui generis</i> [<i>rozhodnutí sui generis</i>]	No	-
Simulated transfer [<i>předstíraný převod</i>] (s. 158c CCP)	Measure [<i>opatření</i>] as a form of decision <i>sui generis</i> [<i>rozhodnutí sui generis</i>]	No	-
Surveillance of persons and items [<i>sledování osob a věcí</i>] (s. 158d CCP)	Measure [<i>opatření</i>] as a form of decision <i>sui generis</i> [<i>rozhodnutí sui generis</i>]	No	-
Use of an agent [<i>použití agenta</i>] (s. 158e CCP)	Measure [<i>opatření</i>] as a form of decision <i>sui generis</i> [<i>rozhodnutí sui generis</i>]	No	-

Source: The authors.

1.4. Limits on Investigations under National Law (Paragraph 2)

- 141** In relation to search measures (see above Art 30(1)(a) EPPO Regulation), the Czech CCP imposes certain restrictions to safeguard legal privilege. These restrictions exclude, for example, the seizure of documents and materials related to the defence counsel of the suspect or accused (s. 85b CCP). These are discussed in detail alongside privileges pertaining to Art 29 EPPO Regulation.

1.5. Investigative Limits under National Law and Art 117 (Paragraph 3)

- 142** The thresholds limiting the use of instruments under Art 30(1) EPPO Regulation were discussed earlier alongside the respective measures. However, for the sake of completeness, the two exceptions will be reiterated here.
- 143** The Czech Government has exercised its discretion to restrict the applicability of two provisions under Art 30(1) and (3), in conjunction with Art 117 EPPO Regulation. These restrictions apply to:

a) Interception of Telecommunications Traffic (Art 30(1)(e))

- 144** While the general rule under paragraph 1 should apply to all situations where the offence under investigation carries a maximum sentence of imprisonment of at least four years, the Czech CCP permits this only with a maximum sentence of imprisonment of at least eight years or therein named criminal offences. The exception states that these national

rules will apply not to any offence merely punishable by more than four years' imprisonment:

“In accordance with the final sentence of Art 117 EPPO Regulation, the Czech Republic notifies that, pursuant to Art 30(3) EPPO Regulation, the application of Art 30(1)(e) EPPO Regulation is limited to offences punishable under national law by a maximum sentence of imprisonment of at least eight years, as well as to the following offences: scheming to defraud in insolvency proceedings (s. 226 CC); breach of competition law (s. 248(1)(e) and (2) to (4) CC); arranging an advantage in public procurement, public tenders and government auctions (s. 256 CC); scheming to defraud in public procurement and tenders (s. 257 CC); scheming to defraud at government auction (s. 258 CC); abuse of official power (s. 329 CC); false accusation (s. 345(3) to (5) CC); false testimony and false expert opinion (s. 346(3) to (5) CC); false interpreting (s. 347(3) to (5) CC); and any other intentional offence whose investigation is mandated by an international treaty in force, in accordance with s. 88 CCP.”²⁸⁶



b) Tracking and Tracing of Objects (Art 30(1)(f))

This is limited to proceedings on intentional criminal offences.²⁸⁷

145

1.6. Any Other Measures in the EDP's Member State (Paragraph 4)

1.6.1. Evidentiary Means under Czech Law

Article 30(4) EPPO Regulation stipulates that, in addition to the minimum standard measures under Art 30(1), any additional measures available to national prosecutors must also be accessible to EDPs. Given the potentially broad scope of these measures, which effectively encompass all procedural actions beyond the minimum standards, it is not feasible to provide an exhaustive list here, as they are governed by various ancillary statutes including the Act on the Police of the Czech Republic. Instead, we shall focus in this chapter on introducing **means of obtaining evidence**, constitute an indispensable part of the measures available under Art 30(4) EPPO Regulation.

146

Czech legal doctrine distinguishes between **measures for ensuring the presence of persons** (see Art 33 below) **and seizing items** (previously discussed as part of measures under Art 30(1)) on one hand (both together being forms of ensuring the presence of either a person or an item for the proceedings), and **means of evidence**, which on the other, which would fall within the scope of investigative measures envisaged under **Art 30(4)**. While certain procedures for seizure of items under Art 30(1) may result in obtaining evidence (e.g. the obligation to present an item, the right to seize an item), **they**

147

²⁸⁶ EPPO 2022c, pp. 2–3. Translated by the authors.

²⁸⁷ Ibid., p. 3.

primarily facilitate the process of obtaining evidence rather than defining the available means of evidence. The means of evidence, which fall under Art 30(4), will be introduced below (e.g. witness testimony, expert opinions).

a) Means of Evidence and Ineffective Evidence

- 148** Czech criminal procedure **does not contain an exhaustive provision enumerating all means of evidence.** On the contrary, it adopts a broad and flexible approach, stipulating that **anything capable of contributing to the clarification of a case may serve as evidence.** This principle is reflected in a non-exhaustive list in s. 89(2) CCP, which provides examples but does not impose rigid limitations. This flexibility allows for the incorporation of new forms of evidence as scientific progress expands the boundaries of forensic and investigative techniques. However, this approach could be subject to criticism, as the open-ended nature of evidentiary rules may undermine legal certainty.
- 149** The (in)admissibility of **unlawfully obtained evidence** is addressed in s. 89(3) CCP, which largely adheres to the general rule that evidence acquired unlawfully cannot be used – except when introduced against the person responsible for its unlawful acquisition. Legal doctrine further distinguishes between **relatively ineffective evidence** [*relativně neúčinný důkaz*] and **absolutely ineffective evidence** [*absolutně neúčinný důkaz*], depending on whether the defect can be remedied.
- 150** **Relatively ineffective evidence** refers to evidence that may be rendered admissible through subsequent remedial action. For instance, a statement obtained in breach of an obligation to maintain the confidentiality of classified information or professional secrecy may become valid evidence if the competent authority subsequently waives the confidentiality obligation.
- 151** **Absolutely ineffective evidence**, by contrast, is irreparably tainted and cannot be remedied under any circumstances – such as evidence obtained through duress or coercion.
- 152** **Ongoing recodification efforts** aimed at drafting a new CCP seek to provide a more nuanced framework for assessing the effectiveness and admissibility of evidence in criminal proceedings.

153 Section 89

(1)²⁸⁸ In criminal proceedings, evidence must be gathered to the extent necessary, particularly to establish:

²⁸⁸ § 89

(1) V trestním stíhání je v nezbytném rozsahu třeba dokazovat zejména:

a) zda se stal skutek, v němž je spatřován trestný čin,

b) zda tento skutek spáchal obviněný, případně z jakých pohnutek,

c) podstatné okolnosti mající vliv na posouzení povahy a závažnosti činu,

d) podstatné okolnosti k posouzení osobních, rodinných, majetkových a jiných poměrů obviněného,

- (a) whether the act constituting the alleged criminal offence occurred;
 - (b) whether the accused committed the act, and, if so, what their motives were;
 - (c) material circumstances affecting the assessment of the nature and gravity of the offence;
 - (d) material circumstances relevant to the evaluation of the accused's personal, family, financial, and other conditions;
 - (e) material circumstances enabling the determination of consequences, the extent of damage caused by the offence, and any unjust enrichment;
 - (f) circumstances that led to or facilitated the commission of the offence.
- (2) Anything that may contribute to clarifying the case may serve as evidence, in particular, statements of the accused and witnesses, expert opinions, objects and documents relevant to the criminal proceedings, and examination. Each party may seek, present, or propose the taking of evidence. The fact that evidence was not sought or obtained by an authority involved in criminal proceedings does not constitute grounds for its exclusion.
- (3) Evidence obtained through unlawful coercion or the threat of such coercion may not be used in proceedings, except where it is used as evidence against the person who employed such coercion or threats.

b) Evidence Across Stages of Criminal Proceedings

Before addressing individual means of evidence, a brief overview of the procedural stages at which evidence is collected will be provided. 154

The scope of evidence collection varies across different stages of criminal proceedings and is not uniform across legal systems. This variation is closely linked to the type of pre-trial proceedings employed in each jurisdiction. As previously stated, the Czech legal system follows the **“weak” pre-trial proceedings model**. The core of the criminal process – at least formally – remains the **main hearing** (see above Art 28 EPPO Regulation, Chapter 4.4). 155

This principle dictates that whenever possible, evidence should be taken at the main hearing, as this stage best upholds the principles of publicity, orality, and direct assessment of factual circumstances. Nonetheless, in practice, **a significant portion of evidence is gathered in the pre-trial stages**, shaping the factual foundation of the case 156

e) podstatné okolnosti umožňující stanovení následku, výše škody způsobené trestným činem a bezdůvodného obohacení,

f) okolnosti, které vedly k trestné činnosti nebo umožnily její spáchání.

(2) Za důkaz může sloužit vše, co může přispět k objasnění věci, zejména výpovědi obviněného a svědků, znalecké posudky, věci a listiny důležité pro trestní řízení a ohledání. Každá ze stran může důkaz vyhledat, předložit nebo jeho provedení navrhnout. Skutečnost, že důkaz nevyhledal nebo nevyžádal orgán činný v trestním řízení, není důvodem k odmítnutí takového důkazu.

(3) Důkaz získaný nezákonným donucením nebo hrozbou takového donucení nesmí být použit v řízení s výjimkou případu, kdy se použije jako důkaz proti osobě, která takového donucení nebo hrozby donucení použila.

before it reaches trial. This is especially the case with more diversions being introduced into Czech criminal proceedings, such as plea agreements.

157 The extent of evidence collection is **directly correlated with the type of pre-trial proceedings**.

158 In **abbreviated** pre-trial proceedings [*zkrácené přípravné řízení*], evidence collection is limited in scope. Conversely, in **standard** pre-trial proceedings, a comprehensive collection and presentation of all necessary evidence is required, with particular emphasis on urgent and unrepeatable actions critical to the case. An even broader scope of evidence collection is permitted in **extended** pre-trial proceedings [*rozšířené přípravné řízení*], allowing for a more thorough accumulation of evidence.

1.6.2. Testimony of the Accused

159 The testimony of the accused [*výpověď obviněného*] constitutes a pivotal means of evidence in criminal proceedings, as the accused is often in a unique position to provide the most precise and detailed information regarding the alleged crime. At the same time, it serves as an indispensable component of their defence. However, the accused **cannot be compelled to testify**, as the boundaries of the right against self-incrimination have been discussed above (see above Art 29 EPPO Regulation, Chapter 5.3.1). The accused is not obliged to speak truthfully; however, this does not extend to acts constituting the criminal offences of **false accusation** [*křivé obvinění*] and **defamation** [*pomluva*], which both feature criminal offences, listed under s. 345 and s. 184 CC respectively.

160 An **interrogation** [*výslech*] serves as the process through which a testimony is obtained [*výpověď*], but the two are sometimes used interchangeably in the Czech CCP.

161 As indicated by the terminology, this provision specifically concerns the “testimony of the accused”, meaning that this form of interrogation applies **exclusively to individuals who have been formally charged and are thus in the position of an accused person, but not to suspects** (see Art 26 EPPO Regulation, Chapter 2.2.6). While this distinction may appear to be merely terminological, it carries significant legal implications.

162 A **formal protocol** with detailed requirements is produced from an interrogation of the accused [*protokol o výslechu obviněného*]. The accused has the right to have defence counsel present and must be informed of the charges for which the proceedings are conducted. They must also be informed of their rights.

163 In contrast, in the case of suspects, only an **official record of explanation** [*úřední záznam o podání vysvětlení*] is produced, which is significantly less formal and, except for explicitly listed exceptions, **cannot be used as evidence in court**. This primarily applies to cases where both the public prosecutor and the accused consent – in such instances,

official records may be read aloud during the main hearing and serve as means of evidence (s. 211(6) CCP); see similarly for main hearing on abbreviated proceedings s. 314d(2) CCP.

The process of obtaining the testimony of the accused is a structured procedure that encompasses several critical steps: 164

1. **Establishing the identity** and personal details of the accused to ensure accurate documentation and accountability.
2. Clarifying the **nature of the accusation** to provide the accused with a clear understanding of the charges they are facing.
3. Informing the accused of their **fundamental rights**, including the right to remain silent and the right to legal representation, thereby safeguarding their legal protections and ensuring the integrity of the judicial process.

After this, the **monological phase** follows, during which the accused is allowed to speak freely and without interruption. They should not be interrupted unless significantly diverging from the topic at hand. This is then succeeded by the **dialogical phase**, where the accused responds to specific questions posed by the interrogators. It is imperative that the accused is given the opportunity to review the protocol or have it read aloud upon request, ensuring that the recorded testimony accurately reflects their statements and that their rights are fully upheld throughout the process. 165

An accused may be interrogated via videoconference (s. 111a). 166

Section 91 167

(1)²⁸⁹ Before conducting the first interrogation, the identity of the accused must be established, the nature of the charges explained, and the accused informed of their rights and the penal consequences of false accusation and defamation. If the proceedings concern an offence for which a plea agreement may be concluded, the accused must also be informed that they may negotiate a plea agreement with the public prosecutor during the pre-trial proceedings, subject to court approval. The accused must be fully informed of the nature and consequences of such an agreement, including the fact that by accepting

²⁸⁹ § 91

(1) Před prvním výslechem je třeba zjistit totožnost obviněného, objasnit mu podstatu sděleného obvinění a poučit jej o jeho právech a o trestních následcích krivého obvinění a pomluvy. Je-li vedeno řízení pro trestný čin, u něhož lze sjednat dohodu o vině a trestu, musí být obviněný v rámci poučení upozorněn také na skutečnost, že v přípravném řízení může se státním zástupcem sjednat dohodu o vině a trestu, kterou schvaluje soud. Obviněného je třeba poučit o podstatě a důsledcích sjednání dohody o vině a trestu, o tom, že se vzdává práva na projednání věci v hlavním líčení a práva podat odvolání proti rozsudku, kterým soud schválil dohodu o vině a trestu, s výjimkou případu, kdy takový rozsudek není v souladu s dohodou o vině a trestu, s níž souhlasil (§ 245 odst. 1 věta druhá), a o podmínkách, za nichž může soud rozhodnout o řádně uplatněném nároku poškozeného (§ 314r odst. 4). Obsah poučení se poznamená v protokole. Nelze-li totožnost obviněného ihned zjistit, je nutno k protokolu o jeho výslechu připojit takové důkazy, aby tato osoba nemohla být zaměněna s jinou.

(2) Je-li obviněných více, vyslychají se odděleně.

it, they waive the right to a full trial and the right to appeal, except in cases where the court ruling does not align with the plea agreement they have accepted (s. 245(1), second sentence). They must also be informed of the conditions under which the court may decide on a properly asserted victim's claim (s. 314r(4)). The contents of this notification must be recorded in the interrogation protocol. If the identity of the accused cannot be immediately verified, evidence sufficient to prevent their misidentification must be attached to the interrogation record.

(2) If there are multiple accused persons, they must be interrogated separately.

Section 92²⁹⁰

(1) The interrogation must be conducted in a manner that provides a complete and clear understanding of facts relevant to the criminal proceedings. The accused must not be coerced in any way to testify or confess. Throughout the interrogation, their dignity and personal rights must be respected.

(2) The accused must be questioned about their personal, family, financial, and other circumstances, ensuring that all necessary information is obtained for determining the type and extent of the penalty if convicted. Additionally, they must be asked about any prior convictions and ongoing criminal proceedings against them.

(3)²⁹¹ The accused must be given the opportunity to respond comprehensively to the charges, including providing a detailed account of the alleged events, presenting mitigating or exculpatory circumstances, and submitting supporting evidence.

(4) The accused may be asked additional questions to clarify their testimony or to resolve any inconsistencies, ambiguities, or contradictions. These questions must be phrased clearly and comprehensibly, without misleading or deceptive suggestions, and must not indicate the expected answer.

Section 93

(1)²⁹² The accused may be permitted to refer to written notes before answering questions,

²⁹⁰ § 92

(1) Výslech obviněného se koná tak, aby poskytl pokud možno úplný a jasný obraz o skutečnostech důležitých pro trestní řízení. Obviněný nesmí být žádným způsobem donucován k výpovědi nebo k doznání. Při výslechu je nutno šetřit jeho osobnost.

(2) Při výslechu je třeba se obviněného dotázat na jeho osobní, rodinné, majetkové a jiné poměry tak, aby pro případ rozhodnutí o vině a trestu obviněného byly zjištěny skutečnosti v rozsahu nezbytném pro stanovení druhu trestu a jeho výměry. Dále je třeba dotázat se na předchozí tresty a na další trestní stíhání obviněného.

²⁹¹ (3) Obviněnému musí být dána možnost se k obvinění podrobně vyjádřit, zejména souvisle vylíčit skutečnosti, které jsou předmětem obvinění, uvést okolnosti, které obvinění zeslabují nebo vyvracejí, a nabídnout o nich důkazy.

(4) Obviněnému mohou být kladeny otázky k doplnění výpovědi nebo k odstranění neúplnosti, nejasnosti a rozporů. Otázky musí být kladeny jasně a srozumitelně bez předstírání klamavých a nepravdivých okolností; nesmí v nich být naznačeno, jak na ně odpovědět.

²⁹² § 93

provided that, upon request, they submit these notes for review by the interrogating officer. This must be recorded in the interrogation protocol.

(2) If necessary to verify the authenticity of a handwriting sample, the accused may be asked to write a specified number of words, but they cannot be coerced into doing so. However, the accused is always required to submit to procedures necessary to verify their identity.

Section 95²⁹³

(1) The testimony of the accused must be recorded in the interrogation protocol, typically dictated by the interrogator, in direct speech, and as verbatim as possible.

(2) If the interrogation does not take place during the main hearing or a public session, the protocol must be presented to the accused for review at the end of the interrogation. Upon request, it must be read aloud. If the interrogation is conducted via videoconferencing, the protocol must be read aloud to the accused upon request. The accused has the right to request amendments or corrections to the protocol to ensure accuracy and alignment with their statement. They must be informed of this right.

(3) If the interrogation is conducted without the presence of a court reporter, the protocol must be read aloud to the accused before signing or presented to them for review in the presence of an independent observer. If the accused raises objections regarding the protocol's content, these must be addressed in the presence of the observer, and the outcome of the discussion must be recorded in the protocol.

(1) Obviněnému může být dovoleno, aby dříve než dá odpověď, nahlédl do písemných poznámek, jež musí vyslychajícímu, požádá-li o to, předložit k nahlédnutí; tato okolnost musí být v protokole poznamenána.

(2) Je-li toho třeba k zjištění pravosti rukopisu, může být obviněný vyzván, aby napsal potřebný počet slov; k tomu nesmí však být žádným způsobem donucován. Obviněný je však povinen vždy strpět úkony potřebné k tomu, aby se zjistila jeho totožnost.

²⁹³ § 95

(1) Výpověď obviněného se do protokolu запиše zpravidla podle diktátu vyslychajícího, v přímé řeči a pokud možno doslova.

(2) Nejde-li o protokol o hlavním líčení nebo o veřejném zasedání, musí být protokol po skončení výsledku obviněnému předložen k přečtení nebo, požádá-li o to, musí mu být přečten; je-li výslech prováděn prostřednictvím videokonferenčního zařízení, protokol se obviněnému na jeho žádost přečte. Obviněný má právo žádat, aby byl protokol doplněn nebo aby v něm byly provedeny opravy v souladu s jeho výpovědí. O tomto právu je třeba obviněného poučit.

(3) Protokol o výsledku, který byl prováděn bez přibrání zapisovatele, je nutno vyslychanému před podpisem přečíst nebo k přečtení předložit v přítomnosti nezúčastněné osoby. Má-li vyslychaný proti obsahu protokolu námitky, je nutno je projednat v přítomnosti přibrané osoby a výsledek projednání pojmout do protokolu.

Section 111a

(1)²⁹⁴ If the interrogation of the accused is conducted via videoconference, their defence counsel shall be informed of the time and location to which the accused has been summoned. In the case of an interrogation of a co-accused, a witness, or an expert conducted in this manner, the defence counsel of the accused shall be notified of the time and location from which the interrogation will be conducted by the relevant authority involved in criminal proceedings.

(2) When an individual is being interrogated via videoconference, their identity shall be verified by a court, prosecutor's office, or law enforcement agency employee designated for this task by the person conducting the interrogation. With the consent of the interrogating authority, the identity verification at the location where the person being questioned is present may also be carried out by an employee of the court, prosecutor's office, prison, or law enforcement agency, provided they have been authorised by the presiding judge, chief prosecutor, prison director, or head of the relevant law enforcement agency. This employee must remain present at the location for the entire duration of the interrogation.

(3)²⁹⁵ If a witness whose identity is protected is being interrogated via videoconference, their identity shall be verified in court proceedings by the presiding judge or a court employee responsible for handling classified information, designated for this task by the presiding judge. In pre-trial proceedings, identity verification shall be conducted by an employee of the prosecutor's office or law enforcement agency responsible for classified information protection, designated for this task by the head of the relevant public prosecutor's office or the head of the relevant law enforcement agency. This employee must remain present at the location for the entire duration of the interrogation.

²⁹⁴ § 111a

(1) Je-li výslech obviněného prováděn prostřednictvím videokonferenčního zařízení, vyrozumí se jeho obhájce o době a místě, na které byl obviněný předvolán. V případě výslechu spoluobviněného, svědka nebo znalce tímto způsobem se obhájce obviněného vyrozumí o době a místě, ze kterého bude výslech provádět příslušný orgán činný v trestním řízení.

(2) Je-li výslech osoby prováděn prostřednictvím videokonferenčního zařízení, ověří její totožnost zaměstnanec soudu, státního zastupitelství nebo policejního orgánu pověřený k tomu osobou provádějící výslech. Osobou ověřující totožnost v místě, kde se při výslechu nachází vyslýchaný, může být se souhlasem osoby provádějící výslech i zaměstnanec soudu, státního zastupitelství, věznice nebo policejního orgánu, pokud k tomu byl pověřen předsedou tohoto soudu, vedoucím státním zástupcem, ředitelem věznice nebo vedoucím příslušníkem policejního orgánu. Tento zaměstnanec je po celou dobu výslechu přítomen na místě, kde se nachází vyslýchaná osoba.

²⁹⁵ (3) Totožnost svědka, jehož totožnost je utajována a jehož výslech je prováděn prostřednictvím videokonferenčního zařízení, ověří v řízení před soudem předseda senátu nebo zaměstnanec soudu pověřený zabezpečováním ochrany utajovaných informací určený k této činnosti předsedou soudu a v přípravném řízení zaměstnanec státního zastupitelství nebo policejního orgánu pověřený ochranou utajovaných informací určený k této činnosti vedoucím státním zástupcem nebo vedoucím příslušníkem policejního orgánu. Tento zaměstnanec je po celou dobu výslechu přítomen na místě, kde se nachází svědek, jehož totožnost je utajována.

(4) Orgán činný v trestním řízení provádějící výslech poučí vyslýchanou osobu před započatím výslechu prováděného prostřednictvím videokonferenčního zařízení o způsobu provedení výslechu.

(5) Kdykoli v průběhu výslechu prováděného prostřednictvím videokonferenčního zařízení může vyslýchaná osoba vznášet námitky proti kvalitě obrazového nebo zvukového přenosu.

- (4) Before commencing an interrogation via videoconference, the authority involved in criminal proceedings conducting the interrogation shall instruct the person being questioned on the procedure for the interrogation via videoconference.
- (5) At any point during the interrogation via videoconference, the person being questioned may raise objections regarding the quality of the video or audio transmission.

1.6.3. Testimony of Witnesses

Witness testimony constitutes another indispensable means of evidence in criminal proceedings. A **witness** is defined as **a person distinct from the accused who has personally perceived, through their own senses, facts relevant to the criminal proceedings. Unlike an expert, a witness cannot be substituted or replaced by another person.** Witnesses provide valuable information based on their direct observations and personal experiences related to the alleged offence.

168

The credibility of a witness's testimony depends on their ability to accurately perceive, retain, and recount the events in question. Therefore, it is essential to assess their reliability and the consistency of their statements. The CCP **does not establish specific conditions for witness competence**, but authorities have the power to verify it, including through the appointment of an expert. A witness may be required to **undergo an examination**, but unlike an accused person, they cannot be confined to an institution for a psychiatric evaluation (s. 118 CCP *in fine*). Instead, such an examination must be conducted on an outpatient basis.

169

Special procedures are implemented when obtaining the testimony of **minors and vulnerable witnesses** to ensure both their protection and the accuracy of their testimony, see further below (s. 55(2), ss. 101a et seq. CCP).

170

Similarly to the accused, a witness may be interrogated via **videoconference** (s. 111a CCP, as translated verbatim above).

171

Section 52

[...] (2)²⁹⁶ If the established circumstances indicate that a witness or a person close to them is at significant risk of harm to their health or other serious violations of their

172

²⁹⁶ § 55 (2) Nasvědčují-li zjištěné okolnosti tomu, že svědku nebo osobě jemu blízké v souvislosti s podáním svědectví zřejmě hrozí újma na zdraví nebo jiné vážné nebezpečí porušení jejich základních práv, a nelze-li ochranu svědka spolehlivě zajistit jiným způsobem, orgán činný v trestním řízení učiní opatření k utajení totožnosti i podoby svědka; jméno a příjmení a jeho další osobní údaje se do protokolu nezapisují, ale vedou se odděleně od trestního spisu a mohou se s nimi seznamovat jen orgány činné v trestním řízení v dané věci. Svědek se poučí o právu požádat o utajení své podoby a podepsat protokol smyšleným jménem a příjmením, pod kterým je pak veden. Je-li třeba zajistit ochranu těchto osob, orgán činný v trestním řízení učiní bezodkladně všechna potřebná opatření. Zvláštní způsob ochrany svědků a osob jim blízkých stanoví zvláštní zákon. Pominou-li důvody pro utajení podoby svědka a oddělené vedení osobních údajů svědka, orgán, který v té době vede trestní řízení, zruší stupeň utajení těchto informací, připojí uvedené údaje k trestnímu spisu a podoba svědka ani údaje o jeho totožnosti se nadále neutajují; to neplatí, je-li utajována totožnost a podoba osob uvedených v § 102a. O postupu podle věty páté orgán činný v trestním řízení bez zbytečného odkladu svědka informuje.

fundamental rights in connection with providing testimony, and if the witness's protection cannot be reliably ensured by other means, the authority involved in criminal proceedings shall take measures to conceal the witness's identity and appearance. The witness's name, surname, and other personal data shall not be recorded in the official protocol but shall be kept separately from the criminal case file and made accessible only to the authorities involved in the criminal proceedings in the given case. The witness shall be informed of their right to request the concealment of their appearance and to sign the protocol using a fictitious name and surname under which they will then be recorded. If necessary to ensure the protection of such individuals, the authority involved in criminal proceedings shall take all necessary measures without delay. Special witness protection measures for witnesses and their close persons [osoba blízká] are governed by a separate law. If the reasons for concealing the witness's identity and keeping their personal data separately cease to exist, the authority conducting the criminal proceedings at that time shall revoke the confidentiality status of this information, attach the previously separated data to the case file, and the witness's identity and appearance shall no longer be kept confidential. However, this does not apply in cases where the identity and appearance of individuals specified in s. 102a remain protected. The authority involved in criminal proceedings shall inform the witness of this decision without undue delay.

Section 97 Duty to Testify²⁹⁷

Everyone is required to appear upon summons and testify as a witness about what they know regarding a criminal offence, the offender, or circumstances relevant to the criminal proceedings.

Section 98 Summoning and Production²⁹⁸

If a witness, despite being properly summoned, fails to appear without a valid excuse, they may be brought in by force [předvedení]. The summons must inform the witness of this possibility and other consequences of non-compliance (s. 66).²⁹⁹ If a member of the armed forces or a law enforcement officer on active duty fails to appear, their commander or superior must be asked to explain the reason for their absence or, if necessary, to ensure their attendance.

²⁹⁷ § 97 Povinnost svědčit

Každý je povinen na předvolání se dostavit a vypovídat jako svědek o tom, co je mu známo o trestném činu a o pachateli nebo o okolnostech důležitých pro trestní řízení.

²⁹⁸ § 98 Předvolání a předvedení

Jestliže se svědek, ač byl řádně předvolán, bez dostatečné omluvy nedostaví, může být předveden. Na to a na jiné následky nedostavení (§ 66) musí být svědek v předvolání upozorněn. Nedostaví-li se příslušník ozbrojených sil nebo ozbrojeného sboru v činné službě, je nutno požádat jeho velitele nebo náčelníka, aby sdělil důvod, proč se předvolaný nedostavil, popřípadě aby ho dal předvést.

²⁹⁹ This refers to the right of the authorities involved in criminal proceedings to impose a fine on the individual.

Section 101³⁰⁰

(1) Before questioning a witness, their identity and relationship to the accused must always be established. They must also be informed of their right to refuse to testify and, if applicable, of any restrictions on questioning or special procedures under s. 55(2). Additionally, they must be advised that they are obliged to tell the full truth and conceal nothing. They must also be informed about the importance of their testimony in the public interest and the legal consequences of false testimony, false accusation, and defamation. If the witness is under fifteen years old, the instructions must be given in a manner appropriate to their age.

(2) At the beginning of the examination, the witness must be asked about their relationship to the case and the parties involved, as well as any other factors relevant to assessing their credibility. The examination should be conducted in a way that provides a complete and clear account of facts relevant to the criminal proceedings, as perceived by the witness. The witness must be given the opportunity to provide a continuous account of what they know and how they came to know it. Their personal dignity must be respected, particularly concerning their personal data and private matters.

(3) Questions may be asked to supplement or clarify the testimony and to resolve any inconsistencies. Questions related to the witness's private matters, especially if they are an injured party to the crime, may only be asked if strictly necessary for the case. They must be phrased sensitively and comprehensively to avoid the need for repeated questioning. The wording of such questions must take into account the witness's age, personal experience, and psychological state. Misleading questions, as well as questions containing false or suggestive information, must not be asked.

(4) If it is necessary to verify the authenticity of handwriting, the witness may be required to write a specified number of words.

³⁰⁰ § 101

(1) Před výslechem svědka je třeba vždy zjistit jeho totožnost, jeho poměr k obviněnému, poučit jej o právu odepřít výpověď, a je-li toho třeba, též o zákazu výslechu nebo o možnosti postupu podle § 55 odst. 2, jakož i o tom, že je povinen vypovědět úplnou pravdu a nic nezamlčet. Dále musí být poučen o významu svědecké výpovědi z hlediska obecného zájmu a o trestních následcích křivé výpovědi, křivého obvinění a pomluvy. Je-li jako svědek vyslýchána osoba mladší než patnáct let, je třeba ji poučit přiměřeně jejímu věku.

(2) Na počátku výslechu musí být svědek dotázán na poměr k projednávané věci a ke stranám a podle potřeby též na jiné okolnosti významné pro zjištění jeho hodnověrnosti. Výslech svědka se koná tak, aby poskytl pokud možno úplný a jasný obraz o skutečnostech důležitých pro trestní řízení, které svědek vnímal svými smysly. Svědkovi musí být dána možnost, aby souvisle vypověděl vše, co sám o věci ví a odkud se dozvěděl okolnosti jím uváděné. Při výslechu je nutno šetřit jeho osobnost, zejména pokud jde o jeho osobní údaje a intimní oblast.

(3) Svědkovi mohou být kladené otázky k doplnění výpovědi nebo k odstranění neúplnosti, nejasnosti a rozporů. Otázky směřující do intimní oblasti vyslýcháného svědka, zejména jestliže jde o osobu poškozenou trestným činem, lze klást jen, pokud je to nezbytné pro objasnění skutečností důležitých pro trestní řízení, zvláště šetrně a po obsahové stránce vyčerpávajícím způsobem, aby nebylo nutné výslech opakovat; jejich formulaci je třeba při zachování potřebné ohleduplnosti přizpůsobit věku, osobním zkušenostem a psychickému stavu svědka. Svědkovi nesmějí být kladeny otázky, v nichž by byly obsaženy klamavé a nepravdivé okolnosti nebo okolnosti, které se mají zjistit teprve z jeho výpovědi.

(4) Je-li toho třeba k zjištění pravosti rukopisu, může být svědkovi přikázáno, aby napsal potřebný počet slov.

Section 101a³⁰¹

If an authority involved in criminal proceedings refuses to draft a protocol under s. 55(2) despite the witness's request and specific reasons justifying such a procedure, the matter must be referred to the public prosecutor for review of the correctness of such procedure. If there is no urgency, the examination is postponed until the public prosecutor issues a decision. Otherwise, the witness is examined, but the protocol must be handled in a way that maintains the confidentiality of the witness's identity until the prosecutor's decision is made.

Section 101b³⁰²

In cases involving crimes against human dignity in the sexual sphere, human trafficking under s. 168(2)(a) CC, abuse of a dependent person (s. 198 CC), or domestic abuse (s. 199 CC), an injured party who testifies as a witness may only be questioned through the authority involved in criminal proceedings.

Section 102

(1)³⁰³ If a witness under the age of eighteen is questioned about circumstances that could negatively affect their mental or moral development, the examination must be conducted with special care and in a manner that minimises the need for repeated questioning. A representative from the child protection authority or another person with experience in

³⁰¹ § 101a

Neshledá-li policejní orgán důvod k sepsání protokolu o výsledku způsobem uvedeným v § 55 odst. 2, ačkoliv se jej svědek domáhá a uvádí konkrétní skutečnosti, které podle něj takový postup sepsání protokolu odůvodňují, policejní orgán věc předloží státnímu zástupci, aby přezkoumal správnost jeho postupu. Nehrozí-li nebezpečí z prodlení, odloží výslech svědka do doby, než státní zástupce přijme opatření. V opačném případě svědka vyslechně a do přijetí opatření státního zástupce s protokolem nakládá tak, aby totožnost svědka zůstala utajena.

³⁰² § 101b

Je-li v řízení o trestném činu proti lidské důstojnosti v sexuální oblasti anebo trestném činu obchodování s lidmi podle § 168 odst. 2 písm. a) trestního zákoníku, týrání svěřené osoby (§ 198 trestního zákoníku) nebo týrání osoby žijící ve společném obydlí (§ 199 trestního zákoníku) jako svědek vyslýchán poškozený, lze mu klást otázky jen prostřednictvím orgánu činného v trestním řízení.

³⁰³ § 102

(1) Je-li jako svědek vyslýchána osoba mladší než osmnáct let o okolnostech, jejichž oživování v paměti by vzhledem k věku mohlo nepříznivě ovlivňovat její duševní a mravní vývoj, je třeba výslech provádět zvlášť šetrně a po obsahové stránce tak, aby výslech v dalším řízení zpravidla už nebylo třeba opakovat; k výsledku se přibere orgán sociálně-právní ochrany dětí nebo jiná osoba mající zkušenosti s výchovou mládeže, která by se zřetelem na předmět výslechu a stupeň duševního vývoje vyslýchané osoby přispěla k správnému vedení výslechu. Může-li to přispět k správnému provedení výslechu, mohou být přibráni i rodiče. Osoby, které byly takto přibrány, mohou navrhnout odložení úkonu na pozdější dobu a v průběhu provádění takového úkonu navrhnout jeho přerušení nebo ukončení, pokud by provedení úkonu nebo pokračování v něm mělo nepříznivý vliv na psychický stav vyslýchané osoby. Nehrozí-li nebezpečí z prodlení, orgán činný v trestním řízení takovému návrhu vyhoví.

(2) V dalším řízení má být taková osoba vyslechnuta znovu jen v nutných případech. V řízení před soudem je možno na podkladě rozhodnutí soudu provést důkaz přečtením protokolu nebo přehráním obrazového a zvukového záznamu pořízeného o výsledku provedeném prostřednictvím videokonferenčního zařízení i bez podmínek uvedených v § 211 odst. 1 a 2. Osoba, která byla k výsledku přibrána, se podle potřeby vyslechně k správnosti a úplnosti zápisu, k způsobu, jímž byl výslech prováděn, jakož i k způsobu, jímž vyslýchána osoba vypovídala.

(3) Osobě mladší než 18 let lze klást otázky jen prostřednictvím orgánu činného v trestním řízení.

youth education must be present to ensure the proper conduct of the examination. If beneficial for the conduct of the interrogation, the minor's parents may also be involved. These accompanying individuals may propose postponing, interrupting, or terminating the examination if it could negatively impact the minor's psychological state. If there is no urgent need, the authority involved in criminal proceedings must comply with such requests.

(2) The minor should only be re-examined if absolutely necessary. In court proceedings, evidence may be presented by reading the examination protocol or playing an audio-visual recording of the examination conducted via videoconference, even without the conditions set out in s. 211(1) and (2). The accompanying individual may be questioned about the accuracy and completeness of the record, as well as the manner in which the examination was conducted.

(3) A minor witness may only be questioned through the authority involved in criminal proceedings.

Section 102a³⁰⁴

(1) If a witness is a law enforcement officer or a foreign police officer who:
(a) Acted as an undercover agent or conducted a controlled delivery in the criminal proceedings; or

(b) Was directly involved in deploying an undercover agent or the execution of a controlled delivery;

they must testify as a protected witness whose identity and appearance remain concealed.

(2) In exceptional cases, and only if there is no risk to the witness's life, health, or further service, or to the safety of a close person [osoba blízká], they may testify without anonymity. This requires an application from the public prosecutor and approval from the relevant security agency director.

³⁰⁴ § 102a

(1) Má-li být vyslechnuta jako svědek osoba, která je služebně činná v policejním orgánu nebo je policistou jiného státu,

a) použitá v trestním řízení jako agent anebo provádějící předstíraný převod, nebo

b) bezprostředně se podílející na použití agenta nebo provedení předstíraného převodu,

je vyslýchána jako svědek, jehož totožnost a podoba jsou utajeny.

(2) Ve výjimečném případě a za podmínky, že v důsledku výslechu nehrozí újma na životě, zdraví nebo další služební činnosti osoby uvedené v odstavci 1 anebo k ohrožení života nebo zdraví osoby jí blízké, lze provést její výslech jako svědka bez utajení totožnosti nebo podoby, a to pouze na návrh státního zástupce na základě vyjádření příslušného ředitele bezpečnostního sboru.

Section 103³⁰⁵

The provisions of s. 93(1) and s. 95 on the interrogation of the accused apply correspondingly to witness examinations.

Section 103a Information on Dangerous Accused and Convicted Persons³⁰⁶

(1) A witness facing potential danger due to the release of the accused or the convicted person may request information on:

- (a) The release or escape of the accused from custody on remand;
- (b) The release or escape of a convict from imprisonment;
- (c) The suspension of a sentence of imprisonment;
- (d)³⁰⁷ The release or escape of a convict from institutional protective treatment;
- (e) The conversion of institutional protective treatment to outpatient care;
- (f) The release or escape of a convict from preventive detention;
- (g) The conversion of preventive detention to protective treatment;
- (h) The extradition or transfer of the accused or convict to another country under international judicial cooperation.

(2)³⁰⁸ If a witness has not requested such information, but the accused or convicted person is released or escapes, and there is a reasonable fear for the witness's safety, the authority involved in criminal proceedings, probation service, prison, medical institution, or preventive detention facility must immediately inform the law enforcement

³⁰⁵ **§ 103**

Ustanovení § 93 odst. 1 a § 95 o výslechu obviněného se užije přiměřeně i na výslech svědka.

³⁰⁶ **§ 103a Informace o nebezpečném obviněném a odsouzeném**

(1) Svědek, kterému hrozí nebezpečí v souvislosti s pobytem obviněného nebo odsouzeného na svobodě, může požádat o informace o

- a) propuštění nebo uprchnutí obviněného z vazby,
- b) propuštění nebo uprchnutí odsouzeného z výkonu trestu odnětí svobody,
- c) přerušení výkonu trestu odnětí svobody,
- ³⁰⁷ d) propuštění nebo uprchnutí odsouzeného z výkonu ústavního ochranného léčení,
- e) změně formy ochranného léčení z ústavní na ambulantní,
- f) propuštění nebo uprchnutí odsouzeného z výkonu zabezpečovací detence,
- g) změně zabezpečovací detence na ochranné léčení,
- h) jakémkoliv vydání obviněného nebo odsouzeného do cizího státu nebo jeho předání do jiného členského státu Evropské unie v rámci mezinárodní justiční spolupráce ve věcech trestních.

³⁰⁸ (2) Nepodal-li svědek žádost podle odstavce 1, obviněný nebo odsouzený byl propuštěn nebo uprchl a je-li důvodná obava, že svědkovi hrozí nebezpečí v souvislosti s pobytem obviněného nebo odsouzeného na svobodě, orgán činný v trestním řízení, Probační a mediační služba, věznice, zdravotnické zařízení, v němž odsouzený vykonává ústavní ochranné léčení, nebo ústav pro výkon zabezpečovací detence neprodleně informuje o této skutečnosti policejní orgán, který vede nebo vedl trestní řízení v dané trestní věci, který přijme potřebná opatření k zajištění bezpečí svědka, včetně jeho vyrozumění o propuštění nebo uprchnutí; policejní orgán v těchto případech též vyrozumí svědka o opatřeních přijatých k zajištění jeho bezpečí, byla-li taková opatření přijata a nepovede-li vyrozumění ke zmaření nebo ztížení jejich účelu.

(3) Odstavce 1 a 2 se použijí obdobně i v případech, kdy ochranné léčení nebo zabezpečovací detence byly uloženy osobě, která se dopustila činu jinak trestného.

(4) Na postup při podání žádosti a jejím vyřizování se přiměřeně užijí ustanovení zákona o obětech trestných činů.

agency, which will take necessary protective measures and notify the witness. If protective measures are taken, the law enforcement agency must inform the witness unless doing so would compromise their effectiveness.

(3) The provisions of paragraphs 1 and 2 apply similarly if protective treatment or preventive detention was imposed on a person who committed an otherwise criminal offence.

(4) The procedure for requesting and processing such information follows the rules established in the Victims of Crime Act.³⁰⁹

Section 104³¹⁰

(1) A witness is entitled to reimbursement of necessary expenses according to regulations governing travel expenses and lost earnings (witnesses' entitlement to reimbursement). This entitlement must be claimed within three days after the examination or notification that the examination will not take place; the witness must be informed of this right.

(2) The entitlement also applies to a witness or other person, except for a suspect or accused, who appears upon request for another evidentiary procedure.

(3) The amount of reimbursement is usually determined immediately by the authority that summoned the witness or, in court proceedings, by the presiding judge.

1.6.4. Experts, Expert Offices and Expert Institutes

Expert opinions [*znalecký posudek*] play a crucial role in the Czech criminal justice system when specialised knowledge is required to determine a certain fact. Apart from ss. 105 et seq. CCP, this area is primarily governed by the **Act on Experts, Expert Offices, and Expert Institutes** [zákon č. 254/2019 Sb., o znalcích, znaleckých kancelářích a znaleckých ústavech]. Please note that in some instances, incorrect references to repealed statutes may appear in discourse despite the systematic recodification of statutes governing the role of experts.

Additionally, three **secondary legislative acts** are of significance:

- Decree No 503/2020 Coll., on the performance of expert activities [vyhláška č. 503/2020 Sb., o výkonu znalecké činnosti].

³⁰⁹ Victims of Crime Act [zákon č. 45/2013 Sb., o obětech trestných činů].

³¹⁰ § 104 Svědečné

(1) Svědek má nárok na náhradu nutných výdajů podle zvláštního právního předpisu upravujícího cestovní náhrady a prokázaného ušlého výdělku (svědečné). Nárok zaniká, neuplatní-li jej svědek do tří dnů po svém výsledku nebo po tom, co mu bylo sděleno, že k výsledku nedojde; na to musí být svědek upozorněn.

(2) Nárok podle odstavce 1 má svědek nebo jiná osoba, s výjimkou podezřelého nebo obviněného, též tehdy, dostaví-li se na výzvu orgánu činného v trestním řízení k provedení jiného úkonu dokazování.

(3) Výši svědečného určí zpravidla ihned po uplatnění nároku na svědečné ten, kdo svědka nebo jinou osobu uvedenou v odstavci 2 předvolal, a v řízení před soudem předseda senátu.

- Decree No 504/2020 Coll., on expert fees [vyhláška č. 504/2020 Sb., o znalečném].
- Decree No 505/2020 Coll., establishing a list of expert fields within various expert disciplines, other certifications of professional competence, certificates issued by professional chambers, and specialised studies for specific fields and disciplines [vyhláška č. 505/2020 Sb., kterou se stanoví seznam znaleckých odvětví jednotlivých znaleckých oborů, jiná osvědčení o odborné způsobilosti, osvědčení vydaná profesními komorami a specializační studia pro obory a odvětví].

- 175** According to the CCP, an expert opinion is required when the resolution of a case necessitates specialised knowledge beyond the competence of the court or investigating authorities. The process of obtaining an expert opinion begins with the appointment of an expert, who must either be listed in the official register of experts or belong to a recognised expert institution. The expert's role is to provide an objective analysis based on their specialised knowledge, which is then documented in a formal opinion. This opinion must contain a detailed explanation of the methods used, the findings, and the expert's conclusions, ensuring that the court can scrutinise both the validity and reliability of the presented evidence.
- 176** A crucial distinction in Czech criminal proceedings exists between an **expert opinion** [*znalecký posudek*] and a **specialist report** [*odborné vyjádření*]. A specialist report is typically used in less complex cases where the required knowledge does not demand the depth of analysis provided by a full expert opinion. In contrast, the CCP mandates an expert opinion in more complex cases, particularly those involving intricate medical, technical, financial, or psychological issues. The expert's function is to elucidate these complex matters for the court, thereby aiding in the accurate determination of facts. While the expert's conclusions are not legally binding on the court, they are considered alongside other evidence, in accordance with the principle of free evaluation of evidence.
- 177** Contemporary case law recognises the possibility of courts conducting a **material assessment** of expert opinions. The debate between material and formal assessment defines the extent of judicial review over expert conclusions in criminal proceedings. Historically, the formal approach – strongly rooted in earlier jurisprudence – viewed the expert as an authoritative evaluator of facts, with courts limited to procedural and formal scrutiny of their conclusions. This perspective was supported by parts of Czechoslovak jurisprudence, which argued that judges lack the necessary expertise to evaluate the substantive accuracy of an expert's conclusions.
- 178** However, modern criminal law doctrine and case law now lean decisively towards material evaluation. Recent judgments of the Constitutional Court and the Supreme Court uphold the principle of **free evaluation of evidence**, which dictates that no single piece

of evidence should possess inherently superior probative value.³¹¹ Consequently, courts are empowered to scrutinise expert opinions not only in formal terms but also in their substantive content – assessing the logical coherence of reasoning, the appropriateness of methodologies, and the consistency of conclusions with the overall body of evidence. This approach ensures that expert opinions are not treated as dogma but as one of several elements in the court’s deliberation, subject to critical judicial review.

Section 105³¹²

(1) If specialised knowledge is required to clarify a fact important for criminal proceedings, authorities involved in criminal proceedings shall seek a specialist report [*odborné vyjádření*]. If the complexity of the matter renders this approach insufficient, the authority involved in criminal proceedings shall engage an expert. During the pre-trial proceedings, the expert is appointed by the authority involved in criminal proceedings, which deems the expert opinion [*znalecký posudek*] necessary for the decision. If the matter has been returned for further investigation, the public prosecutor appoints the expert; in court proceedings, the appointment is made by the presiding judge. The accused and, in court proceedings, the public prosecutor must also be notified of the expert’s appointment. Notification is also given to any other individual who is required to act or to endure something in connection with the submission of the expert opinion.

(2)³¹³ When appointing an expert, consideration must be given to any grounds for exclusion stipulated by special statutes. An expert may decline to submit an opinion for

179

³¹¹ Decision of the Supreme Court No 4 Tdo 877/2020 of 15 September 2020; decision of the Constitutional Court No I. ÚS 504/17 of 17 October 2017. See this discussion, most recently, in Ševčík 2023, pp. 177–180 or Ottová 2022b, pp. 567–575.

³¹² § 105

(1) Je-li k objasnění skutečnosti důležité pro trestní řízení třeba odborných znalostí, vyžádá orgán činný v trestním řízení odborné vyjádření. Jestliže pro složitost posuzované otázky takový postup není postačující, přibere orgán činný v trestním řízení znalce. V přípravném řízení přibírá znalce ten orgán činný v trestním řízení, jež považuje znalecký posudek za nezbytný pro rozhodnutí, pokud byla věc vrácena k došetření, státní zástupce, a v řízení před soudem předseda senátu. O přibrání znalce se vyrozumí obviněný a v řízení před soudem též státní zástupce. Jiná osoba se o přibrání znalce vyrozumí, je-li k podání znaleckého posudku třeba, aby tato osoba něco konala nebo strpěla.

³¹³ (2) Při výběru osoby, která má být jako znalec přibrána, je třeba přihlížet k důvodům, pro které podle zvláštního zákona je znalec z podání znaleckého posudku vyloučen. Znalec může odmítnout podání znaleckého posudku z důvodů uvedených v jiném právním předpisu a také z důvodů uvedených v § 99 a 100. O vyloučení znalce rozhodne orgán činný v trestním řízení, který jej k podání znaleckého posudku přibral, a v řízení před soudem předseda senátu. Při vyžadování odborného vyjádření orgán činný v trestním řízení zváží, zda osoba, od níž odborné vyjádření vyžaduje, s ohledem na svůj poměr k obviněnému, jiným osobám zúčastněným na trestním řízení nebo poměr k věci není podjatá.

(3) Proti osobě znalce lze vznést námitky z důvodu podjatosti, pro který je vyloučen z podání znaleckého posudku podle zvláštního zákona. Vedle toho lze vznést námitky proti odbornému zaměření znalce nebo proti formulaci otázek položených znalci. V přípravném řízení důvodnost takových námitek posoudí státní zástupce a v řízení před soudem předseda senátu soudu, před kterým se v době oznámení námitek vede řízení; jsou-li námitky uplatněny v rámci opravného prostředku, posoudí je orgán, kterému přísluší o opravném prostředku rozhodnout. Vyhoví-li tento orgán námitkám a důvody pro vyžádání znaleckého posudku trvají, učiní opatření k vyžádání znaleckého posudku buď jiným znalcem nebo podle jinak formulovaných otázek; v opačném případě oznámí osobě, která

reasons set out in other statutes and those provided in ss. 99–100. Decisions regarding the exclusion of an expert are made by the authority that engaged the expert to provide an opinion, or, in court proceedings, by the presiding judge. When requesting an expert opinion, the authority involved in criminal proceedings must ensure that the appointed expert has no potential bias, particularly in relation to their connection to the accused, other persons involved in the criminal proceedings, or the subject matter under examination.

(3) Objections may be raised against an expert on the grounds of bias, for which the expert is excluded from submitting an expert opinion according to a special statute. In addition, objections can be raised against the professional focus of the expert or against the formulation of the questions asked by the expert. In pre-trial proceedings, the public prosecutor assesses the reasonableness of such objections and in proceedings before a court, the presiding judge of the court before which the proceedings are conducted at the time of notification of objections; if the objections are raised as part of a remedy, they will be assessed by the authority responsible for deciding on the remedy. Should the objections be upheld and the need for an expert opinion persist, measures shall be taken to either appoint a different expert or reformulate the questions. Otherwise, the person raising the objections shall be informed that no grounds for further action were found.

(4) If the clarification of a particularly important fact is required, two experts must be engaged. The presence of two experts is also mandatory for the examination and autopsy of a corpse (s. 115). A doctor who treated the deceased for an illness immediately preceding death is prohibited from serving as an expert for the examination and autopsy of the corpse.

(5) A person registered as an expert or expert office in the official list of experts, expert offices and expert institutes, or a natural or legal person with the requisite professional qualifications, may be requested to provide an expert opinion under paragraph 1. Any expert opinion provided to the authorities involved in criminal proceedings by a state body must be submitted free of charge.

námítka vznesla, že neshledal k takovému postupu důvody. Stanovisko k námitkám uplatněným v rámci opravného prostředku zpravidla tvoří součást odůvodnění rozhodnutí o takovém opravném prostředku.

(4) Jestliže jde o objasnění skutečnosti zvláště důležité, je třeba přibrat znalce dva. Dva znalce je třeba přibrat vždy, jde-li o prohlídku a pitvu mrtvoly (§ 115). K prohlídce a pitvě mrtvoly nesmí být přibrán jako znalec ten lékař, který zemřelého ošetřoval pro nemoc, která smrti bezprostředně předcházela.

(5) O odborné vyjádření podle odstavce 1 lze požádat i osobu, která je podle zvláštního zákona zapsána jako znalec nebo znalecká kancelář v seznamu znalců, znaleckých kanceláří a znaleckých ústavů, a fyzickou nebo právnickou osobu, která má potřebné odborné předpoklady. Státní orgán předloží orgánům činným v trestním řízení odborné vyjádření vždy bez úplaty.

Section 106³¹⁴

The expert must be informed in the summons of the consequences of failure to appear (as per s. 66) and of the obligation to promptly report any circumstances that would disqualify them or otherwise prevent them from acting in the matter as an expert. The expert must also be instructed on the significance of their expert opinion in relation to the public interest and the criminal consequences of providing a false statement or a knowingly false expert opinion. These instructions equally apply to an expert who has submitted an opinion based on a party's request pursuant to s. 89(2)

Section 107 Preparation of an Expert Opinion³¹⁵

(1) The expert entrusted with the task must be provided with the necessary explanations from the case files and the scope of their duties must be clearly delineated. Care must be taken to ensure that experts are not tasked with evaluating evidence or resolving legal issues. If it is necessary for the expert to submit an opinion, they may review the case files, or the files may be loaned to them. The expert may also be permitted to be present during the questioning of the accused and witnesses and to pose questions directly related to the subject matter of the expert opinion. In justified cases, the expert may be allowed to participate in another act of the criminal proceedings if such an act is relevant to the preparation of their opinion. The expert may also suggest that specific evidence be clarified in advance to facilitate the formation of their opinion.

(2)³¹⁶ An expert appointed to provide an expert opinion regarding the cause of death or the state of health of a deceased person is entitled to access the relevant medical documentation for the individual concerned. In other cases, the expert may request medical documentation under the conditions prescribed by special statutes.

(3) Experts are generally required to prepare their opinion in writing. The report is also made available to defence counsel, with the associated costs borne by the defence.

³¹⁴ § 106

Znalec musí být v předvolání upozorněn na následky nedostavení (§ 66) a na povinnost bez odkladu oznámit skutečnosti, pro které by byl vyloučen nebo které mu jinak brání být ve věci činný jako znalec. Znalec musí být též poučen o významu znaleckého posudku z hlediska obecného zájmu a o trestních následcích křivé výpovědi a vědomě nepravdivého znaleckého posudku; to se vztahuje i na znalce, který podal posudek na základě žádosti některé strany podle § 89 odst. 2.

³¹⁵ § 107 Příprava posudku

(1) Znalci, který je pověřen úkonem, se poskytnou potřebná vysvětlení ze spisu a vymezí se jeho úkoly. Přitom je třeba dbát toho, že znalci nepřísluší provádět hodnocení důkazů a řešit právní otázky. Je-li toho k podání posudku třeba, dovolí se znalci nahlédnout do spisů nebo se mu spisy zapůjčí. Může mu být též dovoleno, aby byl přítomen při výsledku obviněného a svědků a aby jim kladl otázky vztahující se na předmět znaleckého vyšetřování. V odůvodněných případech se znalci umožní, aby se zúčastnil provedení i jiného úkonu trestního řízení, pokud takový úkon má význam pro vypracování znaleckého posudku. Znalec může též navrhnout, aby byly jinými důkazy napřed objasněny okolnosti potřebné k podání posudku.

³¹⁶ (2) Znalec přibráný k podání znaleckého posudku o příčině smrti nebo o zdravotním stavu zemřelé osoby je oprávněn vyžadovat zdravotnickou dokumentaci týkající se takové osoby; v ostatních případech může zdravotnickou dokumentaci vyžadovat za podmínek stanovených zvláštním zákonem.

(3) Znalci se zpravidla uloží, aby posudek vypracoval písemně. Posudek se doručuje též obhájci, a to na náklady obhajoby.

Section 108 Examination of an Expert³¹⁷

(1) If the expert has prepared a written opinion, it is sufficient for them to refer to it during the hearing and confirm its contents. If the opinion was not prepared in writing, the expert shall dictate it into the protocol during the hearing.

(2) If more than one expert has been appointed and they have reached the same conclusions after mutual consultation, one of them, as agreed among themselves, shall present the opinion on behalf of all. If the experts' conclusions differ, it is necessary to hear each expert separately.

(3) In pre-trial proceedings, the examination of an expert may be waived if the law enforcement agency or public prosecutor does not have doubts regarding the reliability or completeness of the written expert opinion.

Section 109 Deficiencies in the Expert Assessment³¹⁸

If there are doubts regarding the accuracy of the assessment or if the assessment is unclear or incomplete, the expert shall be asked to provide clarification. If this does not resolve the issue, another expert shall be appointed.

Section 109a Expert Office³¹⁹

(1) The authorities involved in criminal proceedings may also engage an expert office to submit an expert opinion. The expert office engaged to provide the expert opinion shall submit it in writing, specifying the expert who prepared the opinion. This expert may be examined as necessary. If the involvement of two experts is required (as per s. 105(4)), the expert opinion may be submitted by one expert office, but it must be prepared by two experts.

(2) The provisions of ss. 105 to 109 shall apply proportionately to expert offices and to experts who prepared the expert opinion.

³¹⁷ § 108 Výslech znalce

(1) Vypracoval-li znalec posudek písemně, stačí, aby se při výslechu naň odvolal a jej stvrdil. Nebyl-li posudek vypracován písemně, nadiktuje jej znalec při výslechu do protokolu.

(2) Bylo-li přibráno více znalců, kteří dospěli po vzájemné poradě k souhlasným závěrům, podá za všechny posudek ten z nich, jehož sami k tomu určili; různí-li se závěry znalců, je třeba vyslechnout každého zvlášť.

(3) V přípravném řízení lze od výslechu znalce upustit, nemá-li policejní orgán ani státní zástupce o spolehlivosti a úplnosti písemně podaného znaleckého posudku pochybnosti.

³¹⁸ § 109 Vady posudku

Je-li pochybnost o správnosti posudku nebo je-li posudek nejasný nebo neúplný, je nutno požádat znalce o vysvětlení. Kdyby to nevedlo k výsledku, přibere se znalec jiný.

³¹⁹ § 109a Znalecká kancelář

(1) K podání znaleckého posudku může orgán činný v trestním řízení přibrat také znaleckou kancelář. Znalecká kancelář, která byla přibrána k podání znaleckého posudku, podá znalecký posudek písemně. V něm označí znalce, který posudek vypracoval a může být v případě potřeby jako znalec vyslechnut. Je-li třeba přibrat znalce dva (§ 105 odst. 4), může znalecký posudek podat jedna znalecká kancelář, ale znalecký posudek musí vypracovat dva znalci.

(2) Ustanovení § 105 až 109 se jinak přiměřeně použijí i na znalecké kanceláře a na znalce, kteří znalecký posudek vypracovali.

Section 110 Expert Institute³²⁰

(1) In exceptional and particularly complex cases requiring specialised scientific assessment, the authority involved in criminal proceedings or public prosecutor and, in court proceedings, the presiding judge, may engage an expert institute to submit an expert opinion or review an opinion provided by an expert.

(2) The expert institute shall submit its opinion in writing, identifying the person or persons who prepared it. These individuals may, if necessary, be heard as experts. However, such individuals must not include anyone who provided the expert opinion being reviewed by the expert institute. If the involvement of two experts is required (s. 105(4)), the expert opinion may be submitted by one expert institute, but it must be prepared by two individuals.

(3) The provisions of ss. 105 to 109 shall otherwise apply proportionately to expert institutes and to the persons who prepared the expert opinion.

Section 110a³²¹

If an expert opinion submitted by a party meets all the statutory requirements and includes the expert's declaration acknowledging the consequences of knowingly providing a false expert opinion, the report shall be treated in the same manner as an expert opinion requested by an authority involved in criminal proceedings. The authority involved in criminal proceedings shall allow the expert, engaged by a party for the report, to inspect the case file or otherwise access the necessary information required for preparing the expert opinion.

Section 110b Expert Fees

The amount³²² of the expert fee shall be determined by the authority involved in criminal proceedings that appointed the expert, expert office, or expert institute to provide the

³²⁰ § 110 Znalecký ústav

(1) Ve výjimečných, zvláště obtížných případech, vyžadujících zvláštního vědeckého posouzení, může policejní orgán nebo státní zástupce a v řízení před soudem předseda senátu přibrat znalecký ústav k podání znaleckého posudku nebo přezkoumání posudku podaného znalcem.

(2) Znalecký ústav podá posudek písemně. V něm označí osobu nebo osoby, které posudek vypracovaly a mohou být v případě potřeby jako znalci vyslechnuty; takovou osobou nesmí být ten, kdo podal znalecký posudek, který je přezkoumáván znaleckým ústavem. Je-li třeba přibrat znalce dva (§ 105 odst. 4), může znalecký posudek podat jeden znalecký ústav, ale znalecký posudek musí vypracovat dvě osoby.

(3) Ustanovení § 105 až 109 se jinak přiměřeně použijí i na znalecké ústavy a na osoby, které znalecký posudek vypracovaly.

³²¹ § 110a

Jestliže znalecký posudek předložený stranou má všechny zákonem požadované náležitosti a obsahuje doložku znalce o tom, že si je vědom následků vědomě nepravdivého znaleckého posudku, postupuje se při provádění tohoto důkazu stejně, jako by se jednalo o znalecký posudek vyžádaný orgánem činným v trestním řízení. Orgán činný v trestním řízení umožní znalci, kterého některá ze stran požádala o znalecký posudek, nahlédnout do spisu nebo mu jinak umožnit seznámit se s informacemi potřebnými pro vypracování znaleckého posudku.

³²² § 110b Znalečné

expert opinion. In court proceedings, the presiding judge shall determine the fee in accordance with other legal provisions governing expert fees. If the authority involved in criminal proceedings disagrees with the invoiced amount of the expert fee, it shall issue a decision by resolution. A complaint against this resolution shall be admissible and shall have suspensive effect.³²³

Section 111 A Person Appointed to Perform *Ad Hoc* Expert Activities³²⁴

The provisions of ss. 105 to 110b shall apply *mutatis mutandis* if an authority involved in criminal proceedings appoints a person performing expert activities on a one-time basis to provide an expert opinion.

1.6.5. Examination

- 180** Examination is a method of evidence collection that involves the **direct observation and examination of objects, locations, or individuals**. This approach is employed to obtain detailed information regarding physical characteristics and conditions relevant to a case, thereby providing tangible insights that support judicial proceedings.
- 181** As noted above in Chapter 1.2.2 under letter d), those unfamiliar with Czech criminal procedure may find it somewhat challenging to distinguish, at first glance, between **examination** [ohledání] and **searches** [prohlídka]. Examination is governed by ss. 113 et seq. CCP and features a brief examination and analysis that, in simple terms, is not primarily designed to seize items (be it for evidentiary or other purposes) but **rather to establish facts** (which in themselves may serve as evidence).
- 182** Its principal function is to **document the current state** of the examined subject as part of the evidentiary process – whether it be a crime scene, a body, or a document. Typically conducted by law enforcement agencies, inspections often involve expert participation, such as forensic specialists.
- 183** *Types of Examination:*
- **Examination of objects:** This involves a meticulous examination of physical evidence – such as weapons, tools, or other items directly linked to the crime – to determine their characteristics and evidentiary significance.

Výši znalečného určí orgán činný v trestním řízení, který znalce, znaleckou kancelář nebo znalecký ústav k podání znaleckého posudku přibral, a v řízení před soudem předseda senátu v souladu s jinými právními předpisy upravujícími znalečné. Nesouhlasí-li orgán činný v trestním řízení s výší vyúčtovaného znalečného, rozhodne usnesením. Proti usnesení je přípustná stížnost, která má odkladný účinek.

³²³ Please note the distinction between a complaint [stížnost] and a criminal complaint [trestní oznámení], as discussed under Part B.II, Art 26 EPPO Regulation, Chapter 2.2.7, letter c, i).

³²⁴ § 111 Osoba vykonávající jednorázově znaleckou činnost

Ustanovení § 105 až 110b se přiměřeně použijí i v případě, že orgán činný v trestním řízení přibere k podání znaleckého posudku osobu vykonávající znaleckou činnost jednorázově.

- **Examination of places:** This entails a thorough assessment of the crime scene, allowing investigators to reconstruct the circumstances and environment in which the crime occurred, thus contextualising the event.
- **Examination of persons:** This concerns the detailed examination of an individual's physical condition, including injuries or other forensic evidence present on their body, to establish a link to the crime.

Examinations must be scrupulously documented in a **protocol**, which should include comprehensive descriptions, photographs, sketches, and other relevant materials. This detailed record ensures that all findings are accurately preserved and can be referenced throughout the judicial process.

184

Section 113 Purpose of Examination and Record Thereof³²⁵

- (1) Examination is conducted when direct observation is necessary to clarify facts essential to the criminal proceedings. An expert is usually involved in the examination.
- (2) The examination record must provide a complete and accurate representation of the subject of examination. Therefore, photographs, sketches, and other aids should be attached to it.

185

Section 114 Body Examination and Other Similar Procedures³²⁶

- (1) Every individual is required to undergo a body examination if it is absolutely necessary to determine whether there are any traces or effects of a criminal offence on their body. If the examination is not conducted by a doctor, it may only be performed by a person of the same sex.

³²⁵ § 113 Účel ohledání a protokol o něm

- (1) Ohledání se koná, mají-li být přímým pozorováním objasněny skutečnosti důležité pro trestní řízení. K ohledání se zpravidla přibere znalec.
- (2) Protokol o ohledání musí poskytovat úplný a věrný obraz předmětu ohledání; mají se proto k němu přiložit fotografie, náčrty a jiné pomůcky.

³²⁶ § 114 Prohlídka těla a jiné podobné úkony

- (1) Prohlídce těla je povinen se podrobit každý, je-li nezbytně třeba zjistit, zda jsou na jeho těle stopy nebo následky trestného činu. Není-li prohlídka těla prováděna lékařem, může ji provést jen osoba téhož pohlaví.
- (2) Je-li k důkazu třeba provést zkoušku krve nebo jiný obdobný úkon, je osoba, o kterou jde, povinna strpět, aby jí lékař nebo odborný zdravotní pracovník odebral krev nebo u ní provedl jiný potřebný úkon, není-li spojen s nebezpečím pro její zdraví. Odběr biologického materiálu, který není spojen se zásahem do tělesné integrity osoby, již se takový úkon týká, může provést i tato osoba nebo s jejím souhlasem orgán činný v trestním řízení. Na požádání orgánu činného v trestním řízení může tento odběr i bez souhlasu podezřelého nebo obviněného provést lékař nebo odborný zdravotnický pracovník.
- (3) Je-li k důkazu třeba zjistit totožnost osoby, která se zdržovala na místě činu, je osoba, o kterou jde, povinna strpět úkony potřebné pro takové zjištění.
- (4) Nelze-li úkon podle odstavců 1 až 3 pro odpor podezřelého nebo obviněného provést a nejde-li o odběr krve nebo jiný obdobný úkon spojený se zásahem do tělesné integrity, je orgán činný v trestním řízení oprávněn po předchozí marné výzvě tento odpor překonat; policejní orgán potřebuje k překonání odporu podezřelého předchozí souhlas státního zástupce. Způsob překonání odporu musí být přiměřený intenzitě odporu.
- (5) O povinnosti podle předchozích odstavců je třeba onu osobu poučit s upozorněním na následky nevyhovění (§ 66), podezřelý nebo obviněný se poučí také o možnosti postupu podle odstavce 4.

(2) If blood testing or a similar procedure is required as evidence, the individual must allow a doctor or a qualified healthcare professional to take a blood sample or conduct another necessary procedure, provided it does not pose a risk to their health. The collection of biological material that does not interfere with the physical integrity of the individual concerned may also be performed by the person themselves or, with their consent, by an authority involved in criminal proceedings. Upon the request of an authority involved in criminal proceedings, a doctor or healthcare professional may carry out such a procedure even without the consent of the suspect or accused.

(3) If it is necessary to establish the identity of a person who was present at the crime scene, the individual in question must submit to the necessary procedures for identification.

(4) If a person resists procedures under paragraphs 1 to 3, and the procedure does not involve blood collection or any other procedure interfering with bodily integrity, the authority involved in criminal proceedings is authorised to overcome the resistance after an unsuccessful prior request. A law enforcement agency must obtain prior approval from a public prosecutor before overcoming a suspect's resistance. The method used must be proportionate to the level of resistance.

(5) The individual must be informed of their obligation under the previous paragraphs, along with the consequences of non-compliance (s. 66). The suspect or accused must also be advised of the possibility of enforcement under paragraph 4.

Section 115 Examination, Autopsy, and Exhumation of a Body³²⁷

(1) If there is suspicion that a person's death was caused by a criminal offence, the body must be examined and autopsied. In such cases, burial may only proceed with the approval of the public prosecutor, who shall decide on the matter as swiftly as possible.

(2) The exhumation of a body may be ordered by the presiding judge during trial or by the public prosecutor during pre-trial proceedings.

Examination of Mental State

Section 116

(1)³²⁸ If it is necessary to examine the mental state of the accused, an expert in psychiatry must always be appointed.

³²⁷ § 115 Prohlídka a pitva mrtvolý a její exhumace

(1) Vznikne-li podezření, že smrt člověka byla způsobena trestným činem, musí být mrtvola prohlédnuta a pitvána. Pohřbít mrtvolu lze v takových případech jen se souhlasem státního zástupce. O tom rozhodne státní zástupce s největším urychlením.

(2) Exhumaci mrtvolý může nařídít předseda senátu a v přípravném řízení státní zástupce.

³²⁸ § 116

(1) Je-li třeba vyšetřit duševní stav obviněného, přibere se k tomu vždy znalec z oboru psychiatrie.

(2) If the mental state cannot be examined otherwise, the court may, or in pre-trial proceedings, a judge upon the prosecutor's request may, order the accused to undergo observation in a medical institution. If the accused is in custody on remand, observation may also take place in a special department of a correctional facility. A complaint³²⁹ against such a warrant shall be admissible and shall have suspensive effect.

(3) If the expert finds indications suggesting that the accused is incapacitated or has diminished responsibility, they must also assess whether the accused would pose a danger if released.

Section 117³³⁰

Observation of the accused's mental state should not exceed two months, within which an expert opinion must be submitted.

Upon a justified request by the experts, the court may extend this period by no more than one additional month.

In pre-trial proceedings, such an extension may be ordered by a judge upon the prosecutor's request. A complaint against the extension is admissible.

Section 118³³¹

If there are serious doubts as to whether a witness, whose testimony is particularly important for the decision, has a significantly impaired ability to perceive or testify accurately, their mental state may also be subject to expert examination.

However, psychiatric observation of a witness under s. 116(2) is not permissible.

1.6.6. Physical and Documentary Evidence

Physical evidence comprises tangible objects by means of which, or on which, a criminal offence was committed, as well as other items (see s. 112 CCP below) that are, *inter alia*, related to the crime – such as weapons, clothing, or other pertinent objects. It should be noted that this enumeration is purely illustrative and is intended to encompass anything that facilitates the assessment of the factual circumstances.

186

(2) Nelze-li duševní stav vyšetřit jinak, může soud a v přípravném řízení na návrh státního zástupce soudce nařídit, aby obviněný byl pozorován ve zdravotnickém ústavu, nebo je-li ve vazbě, též ve zvláštním oddělení nápravného zařízení. Proti tomuto usnesení je přípustná stížnost, jež má odkladný účinek.

(3) Shledá-li znalec u obviněného příznaky nasvědčující jeho nepřičetnosti nebo zmenšené přičetnosti, vysloví se zároveň o tom, zda je jeho pobyt na svobodě nebezpečný.

³²⁹ Please see under Part B.II, Art 26 EPPO Regulation, Chapter 2.2.7, letter c, i).

³³⁰ § 117

Pozorování duševního stavu nemá trvat déle než dva měsíce; do té doby je třeba podat posudek. Na odůvodněnou žádost znalců může soud a v přípravném řízení na návrh státního zástupce soudce tuto lhůtu prodloužit, nikoli však více než o jeden měsíc. Proti prodloužení lhůty je přípustná stížnost.

³³¹ § 118

Jestliže jsou závažné pochybnosti, zda není u svědka, jehož výpověď je pro rozhodnutí zvláště důležitá, podstatně snížena schopnost správně vnímat nebo vypovídat, je možno vyšetřit znalecky i duševní stav svědka. Pozorování duševního stavu svědka podle § 116 odst. 2 není však přípustné.

- 187** The same provision also covers **documentary evidence**, which includes written or recorded materials that provide information relevant to the case. This category of evidence may encompass official documents, private correspondence, contracts and other written records pertinent to judicial proceedings.
- 188** However, unlike Czech civil law, which defines what constitutes a public document, there is no single, universally accepted definition of documentary evidence or a document within the criminal procedural framework.³³²
- 189** Finally, it is worth noting that the same item may simultaneously constitute both physical and documentary evidence. If the document is examined for its contents, it falls within the scope of s. 112(2) CCP. Conversely, when the physical attributes of the document – such as fingerprints – are analysed, it is treated as physical evidence under s. 112(1) CCP.

- 190** **Section 112**³³³
- (1) Physical evidence comprises objects by means of which, or on which, a criminal offence was committed, as well as other objects that either substantiate or refute the fact in question and may serve as a means of detecting and determining the criminal offence and the offender, including traces of the offence.

(2) Documentary evidence consists of documents whose content substantiates or refutes the fact in question in relation to the criminal offence or the accused.

1.6.7. Special Forms of Evidence

- 191** Special forms of evidence are used in specific circumstances that require tailored investigative approaches. These forms represent the most recent additions to types of evidence recognised under the CCP, which were introduced in the 2001 amendment (Act No 265/2001 Coll.), also referred to as the “Great Amendment” [*velká novela trestního řádu*].
- 192** While not all legal systems list them separately, their inclusion reflected the demands of criminal law practice, particularly the needs of forensic experts and the aim of achieving greater legal certainty, which is ensured through a more detailed and specific procedural framework. However, these methods are not entirely new; they were previously carried out under broader evidentiary provisions before being explicitly regulated. Even today,

³³² See s. 567 of Civil Code [zákon č. 89/2012 Sb., občanský zákoník].

³³³ § 112

(1) Věcnými důkazy jsou předměty, kterými nebo na kterých byl trestný čin spáchán, jiné předměty, které prokazují nebo vyvracejí dokazovanou skutečnost a mohou být prostředkem k odhalení a zjištění trestného činu a jeho pachatele, jakož i stopy trestného činu.

(2) Listinnými důkazy jsou listiny, které svým obsahem prokazují nebo vyvracejí dokazovanou skutečnost vztažující se k trestnému činu nebo k obviněnému.

confrontation and visual identification remain subject to interrogation rules. The individual provisions are translated verbatim below.

a) Confrontation [*konfrontace*]

Confrontation involves bringing together individuals whose testimonies are in conflict to resolve discrepancies (s. 104a CCP). This may involve the accused and a co-accused, the accused and a witness, or two witnesses. There is ongoing debate as to whether experts with conflicting opinions may also be confronted.³³⁴ The primary aim is to clarify contradictory statements and establish a more coherent and accurate understanding of the events in question.

193

When examining special means of evidence, particularly confrontation and identification, it is essential to consider terminological nuances across jurisdictions. While these concepts are regulated in separate provision under Czech and Slovak law, some legal systems incorporate them within the same provision. For instance, the Austrian Strafprozeßordnung (hereinafter referred to as “StPO”) addresses both identification and confrontation under s. 163 [collectively *Gegenüberstellung*], with confrontation specifically outlined in s. 163(3) StPO.

194

b) Identification [*rekognice*]

Identification is the process of recognising a person or object previously observed by a witness (s. 104b CCP). This is used to confirm the identity of suspects or objects relevant to the case. The process must be meticulously documented to ensure its reliability and admissibility in court, thereby upholding the integrity of the evidence. While identification is predominantly visual, the wording of the relevant CCP provisions suggests that other forms, such as auditory identification, are also possible.

195

c) Investigative Experiment [*vyšetřovací pokus*]

An investigative experiment involves creating controlled conditions to test specific hypotheses about the crime (s. 104c CCP). This is used to determine whether certain events could have occurred as described by witnesses or suspects, thereby verifying or challenging their accounts. It is important to distinguish investigative experiments from reconstructions: investigative experiments involve varying conditions in a controlled, almost laboratory-like manner to test different hypotheses, whereas reconstructions aim to recreate the actual circumstances of the crime without altering key variables.

196

d) Reconstruction [*rekonstrukce*]

Reconstruction entails the detailed recreation of the circumstances surrounding the crime to verify the accuracy of testimonies and other evidence (s. 104d CCP). This helps

197

³³⁴ Borčevský 2024, pp. 267–281.

investigators understand how the crime was committed and assess the plausibility of different scenarios, ultimately providing a clearer picture of the events in question.

e) Verification on Site [*prověrka na místě*]

- 198 This involves verifying the accuracy of previously obtained information by visiting the location where the events took place (s. 104e CCP). By assessing the physical characteristics and conditions of the location, investigators can evaluate the reliability of a witness's account and corroborate critical details.

199 Section 104a Confrontation³³⁵

- (1) If the statement of the accused significantly contradicts that of a witness or a co-accused, the accused may be confronted face-to-face with the witness or co-accused.
- (2) If a witness's statement significantly contradicts that of the accused or another witness, the witness may be confronted face-to-face with the accused or the other witness.
- (3) Confrontation may only take place after each of the individuals to be confronted has already been questioned separately, with a protocol recorded on their statements. During the confrontation, the questioned person is invited to directly address the other person regarding the disputed circumstances in their statements, or to provide additional relevant information not previously disclosed. The individuals confronted may only ask each other questions with the interrogator's consent.
- (4) The provisions governing the testimony of the accused and witnesses otherwise apply to confrontation.
- (5) A person under the age of eighteen may only be confronted face-to-face in exceptional cases where it is absolutely necessary for clarifying the matter; in such cases, s. 102 shall apply accordingly. A witness whose identity is protected under s. 55(2) cannot be confronted face-to-face. Similarly, a victim under eighteen years of age cannot be

³³⁵ § 104a Konfrontace

- (1) Jestliže výpověď obviněného v závažných okolnostech nesouhlasí s výpovědí svědka nebo spoluobviněného, může být obviněný postaven svědkovi nebo spoluobviněnému tváří v tvář.
- (2) Jestliže výpověď svědka nesouhlasí v závažných okolnostech s výpovědí obviněného nebo jiného svědka, může být svědek postaven obviněnému nebo jinému svědkovi tváří v tvář.
- (3) Konfrontace se může provést až poté, kdy každá z osob, jež mají být konfrontovány, byla již dříve vyslechnuta a o její výpovědi byl sepsán protokol. Při konfrontaci se vyslýchaná osoba vyzve, aby druhé osobě vypověděla v přímé řeči své tvrzení o okolnostech, v nichž výpovědi konfrontovaných osob nesouhlasí, popřípadě, aby uvedla další okolnosti, které s jejím tvrzením souvisejí a o kterých dosud nevypovídala. Osoby postavené tváří v tvář mohou si klást vzájemně otázky jen se souhlasem vyslychajícího.
- (4) Pro konfrontaci jinak platí ustanovení o výpovědi obviněného a o svědcích.
- (5) Osobu mladší než osmnáct let lze postavit tváří v tvář jen zcela výjimečně, jestliže to je pro objasnění věci nezbytně nutné; v takovém případě se užije přiměřeně § 102. Tváří v tvář nelze postavit svědka, jehož totožnost se utajuje z důvodů uvedených v § 55 odst. 2. Tváří v tvář nelze postavit též poškozeného mladšího osmnácti let s obviněným v případě trestných činů proti lidské důstojnosti v sexuální oblasti.
- (6) Je-li třeba po skončení konfrontace znovu vyslechnout konfrontované osoby, provede se jejich výsledk odděleně.
- (7) Konfrontace se zásadně provádí jen v řízení před soudem; před podáním obžaloby nebo návrhu na schválení dohody o vině a trestu lze konfrontaci provést jen výjimečně, pokud lze očekávat, že její provedení výrazněji přispěje k objasnění věci a stejného cíle nelze dosáhnout jinými prostředky.

confronted with the accused in cases of criminal offences against human dignity in the sexual sphere.

(6) If, after the confrontation, it is necessary to question the confronted individuals again, their questioning shall be conducted separately.

(7) Confrontation is primarily conducted in court proceedings. Before filing an indictment or submitting a proposal for a plea agreement, confrontation may only be conducted exceptionally, provided that its execution is expected to significantly contribute to clarifying the case and that the same objective cannot be achieved by other means.

Section 104b Identification³³⁶

(1) An identification procedure is conducted when it is important for the criminal proceedings that a suspect, accused, or witness recognises a person or object to determine their identity. At least one independent observer must be present during the procedure.

(2) The suspect, accused, or witness required to identify a person or object must first be questioned about the circumstances under which they perceived the person or object, as well as any distinctive features or characteristics that could aid identification. The person or object to be identified must not be shown to them before the procedure.

(3) If a person is to be identified, they shall be presented to the suspect, accused, or witness among at least three other persons who do not significantly differ in appearance. The person to be identified shall position themselves among the other individuals in an order of their own choosing. If identification is based on voice rather than appearance, the person to be identified shall be allowed to speak in any order among other individuals with similar vocal characteristics.

³³⁶ § 104b Rekognice

(1) Rekognice se koná, je-li pro trestní řízení důležité, aby podezřelý, obviněný nebo svědek znovu poznal osobu nebo věc a určil tím jejich totožnost. K provádění rekognice se vždy přibere alespoň jedna osoba, která není na věci zúčastněna.

(2) Podezřelý, obviněný nebo svědek, kteří mají poznat osobu nebo věc, se před rekognicí vyslechnou o okolnostech, za nichž osobu nebo věc vnímali, a o znacích nebo zvlátnostech, podle nichž by bylo možno osobu nebo věc poznat. Osoba nebo věc, která má být poznána, jim nesmí být před rekognicí ukázána.

(3) Má-li být poznána osoba, ukáže se podezřelému, obviněnému nebo svědkovi mezi nejméně třemi osobami, které se výrazně neodlišují. Osoba, která má být poznána, se vyzve, aby se zařadila na libovolné místo mezi ukazované osoby. Jestliže osoba má být poznána nikoliv podle svého vzezření, ale podle hlasu, umožní se jí, aby hovořila v libovolném pořadí mezi dalšími osobami s podobnými hlasovými vlastnostmi.

(4) Není-li možno ukázat osobu, která má být poznána, rekognice se provede podle fotografie, která se předloží podezřelému, obviněnému nebo svědkovi s obdobnými fotografiemi nejméně tří dalších osob. Tento postup nesmí bezprostředně předcházet rekognici ukázáním osoby.

(5) Má-li být poznána věc, ukáže se podezřelému, obviněnému nebo svědkovi ve skupině věcí pokud možno téhož druhu.

(6) Pro rekognici jinak platí ustanovení o výpovědi obviněného a svědka.

(7) Podle povahy věci lze rekognici provést tak, aby se poznávající osoba bezprostředně nesetkala s poznávanou osobou. Provádí-li se rekognice za účasti osoby mladší než osmnáct let, užije se přiměřeně § 102. Rekognici za přítomnosti svědka, jehož totožnost se utajuje z důvodů uvedených v § 55 odst. 2, lze za podmínek utajení jeho podoby a osobních údajů provést, pokud je svědek poznávající osobou.

(8) Po provedení rekognice se podezřelý, obviněný nebo svědek vyslechnou znovu, je-li třeba odstranit rozpor mezi jejich výpověďmi a výsledky rekognice

(4) If it is not possible to present the person to be identified in person, identification may be conducted using a photograph shown to the suspect, accused, or witness alongside at least three similar photographs of other individuals. However, this photographic identification must not immediately precede a live identification procedure.

(5) If an object is to be identified, it shall be shown to the suspect, accused, or witness among a group of similar objects wherever possible.

(6) The provisions governing the testimony of the accused and witnesses otherwise apply to identification procedures.

(7) Depending on the circumstances, the identification procedure may be conducted in a way that prevents direct contact between the identifying and identified individuals. When identification involves a person under eighteen years of age, s. 102 shall apply accordingly. If the procedure involves a witness whose identity is protected under s. 55(2), it may be conducted under conditions ensuring their anonymity, including concealing their appearance and personal details, provided that the witness is the identifying person.

(8) After the identification procedure, the suspect, accused, or witness shall be questioned again if necessary to resolve any discrepancies between their statement and the results of the identification.

Section 104c Investigative Experiment³³⁷

(1) An investigative experiment is conducted when it is necessary to verify or refine facts established in criminal proceedings through observation under artificially created or modified conditions, or to ascertain new facts significant for the case.

(2) An investigative experiment shall not be conducted if it would be inappropriate given the circumstances of the case or the person involved, such as the suspect, accused, co-accused, victim, or witness, or if the same objective can be achieved by other means.

(3) In the pre-trial proceedings, at least one independent observer must be present during an investigative experiment, unless the impossibility of securing such person in the

³³⁷ § 104c Vyšetřovací pokus

(1) Vyšetřovací pokus se koná, mají-li být pozorováním v uměle vytvořených nebo obměňovaných podmínkách prověřeny nebo upřesněny skutečnosti zjištěné v trestním řízení, popřípadě zjištěny nové skutečnosti důležité pro trestní řízení.

(2) K provedení vyšetřovacího pokusu se nepřistoupí, jestliže to je vzhledem k okolnostem případu nebo osobě podezřelého, obviněného, spoluobviněného, poškozeného nebo svědka nevhodné nebo lze-li účelu vyšetřovacího pokusu dosáhnout jinak.

(3) K vyšetřovacímu pokusu, který je prováděn v přípravném řízení, musí být přibrána alespoň jedna osoba, která není na věci zúčastněna, ledaže by nemožnost zajistit její přítomnost při vyšetřovacím pokusu zmařila jeho provedení. Je-li to potřebné vzhledem k povaze věci a ke skutečnostem, které dosud v trestním řízení vyšly najevo, přibere se k vyšetřovacímu pokusu znalec, popřípadě podezřelý, obviněný a svědek. Jejich účast při vyšetřovacím pokusu se řídí ustanoveními, která platí pro jejich výslech. Zúčastní-li se vyšetřovacího pokusu osoba mladší než osmnáct let, užije se přiměřeně § 102.

(4) K úkonům, které souvisejí s vyšetřovacím pokusem, nesmí být podezřelý, obviněný, poškozený nebo svědek, který má právo odepřít výpověď, žádným způsobem donucován.

given time and place would entirely prevent the experiment from being conducted. If necessary, given the nature of the case and the facts established so far, an expert may be involved in the investigative experiment, as well as the suspect, accused, and witness. Their participation shall be governed by the provisions applicable to their questioning. If a person under eighteen years of age participates in the experiment, s. 102 shall apply accordingly.

(4) A suspect, accused, victim, or witness who has the right to refuse to testify must not be coerced into participating in any aspect of an investigative experiment.

Section 104d Reconstruction³³⁸

(1) A reconstruction is conducted when it is necessary to recreate the situation and circumstances under which the crime was committed, or circumstances that are closely related to it, in order to verify the statements of the suspect, accused, co-accused, victim, or witness, particularly if other evidence in the case is insufficient to clarify the matter.

(2) The procedure for reconstruction shall follow the provisions applicable to investigative experiments accordingly.

Section 104e Verification on Site³³⁹

(1) A verification on site is conducted when it is necessary, in the presence of the suspect, accused, or witness, to supplement or clarify information relevant to the criminal proceedings that relate to a specific location.

(2) The procedure shall follow the provisions applicable to investigative experiments accordingly.

³³⁸ § 104d Rekonstrukce

(1) Rekonstrukce se koná, má-li být obnovením situace a okolnosti, za kterých byl trestný čin spáchán nebo které k němu mají podstatný vztah, prověřena výpověď podezřelého, obviněného, spoluobviněného, poškozeného nebo svědka, jestliže jiné důkazy provedené v trestním řízení nepostačují k objasnění věci.

(2) Na postup při rekonstrukci se přiměřeně užijí ustanovení o vyšetřovacím pokusu.

³³⁹ § 104e Prověrka na místě

(1) Prověrka na místě se koná, je-li zapotřebí za osobní přítomnosti podezřelého, obviněného nebo svědka doplnit nebo upřesnit údaje důležité pro trestní řízení, které se vztahují k určitému místu.

(2) Na postup při prověrce na místě se přiměřeně užijí ustanovení o vyšetřovacím pokusu.

2. Article 31 Cross-Border Investigations

2.1. Introductory Remarks	285
2.2. Cooperation and Assignment of Measures (Paragraph 1 and 2)	286
2.3. Judicial Authorisation (Paragraph 3)	287
2.4. Competent National Authorities (Paragraph 4)	290
2.5. Recourse to Mutual Recognition Instruments (Paragraph 6).....	290

1. The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the handling European Delegated Prosecutor, the latter European Delegated Prosecutor shall decide on the adoption of the necessary measure and assign it to a European Delegated Prosecutor located in the Member State where the measure needs to be carried out.

2. The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30. The justification and adoption of such measures shall be governed by the law of the Member States' of the handling European Delegated Prosecutor. Where the handling European Delegated Prosecutor assigns an investigation measure to one or several European Delegated Prosecutors from another Member State, he/she shall at the same time inform his supervising European Prosecutor.

3. If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor shall obtain that authorisation in accordance with the law of that Member State.

If judicial authorisation for the assigned measure is refused, the handling European Delegated Prosecutor shall withdraw the assignment.

However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor requires it, the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment.

4. The assisting European Delegated Prosecutor shall undertake the assigned measure, or instruct the competent national authority to do so.

5. Where the assisting European Delegated Prosecutor considers that:

- (a) the assignment is incomplete or contains a manifest relevant error;
- (b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons;
- (c) an alternative but less intrusive measure would achieve the same results as the measure assigned; or

(d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his/her Member State,

he/she shall inform his supervising European Prosecutor and consult with the handling European Delegated Prosecutor in order to resolve the matter bilaterally.

6. If the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation, the European Delegated Prosecutors concerned may, in agreement with the supervising European Prosecutors concerned, have recourse to such instruments.

7. If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.

8. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide without undue delay, in accordance with applicable national law as well as this Regulation, whether and by when the assigned measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision to the said European Delegated Prosecutors through the competent European Prosecutor.

2.1. Introductory Remarks

Article 31 EPPO Regulation establishes fundamental paradigms for the conduct of cross-border investigations by the EPPO, setting out the procedures for **requesting and executing investigative measures** in such cases. As previously observed, the nature of investigations occasionally necessitates an international dimension, and at times, the Czech Republic also becomes involved in such cases.

This provision, together with Art 32 EPPO Regulation, is designed to facilitate effective cooperation among EDPs, ensuring that investigations are conducted efficiently, consistently, and in accordance with procedural safeguards across different legal systems. Given the complexity of cross-border investigations and the need to uphold procedural standards, it is unsurprising that the **first significant CJEU ruling** concerning the EPPO addressed cross-border investigations, following a preliminary reference from **Higher Regional Court in Vienna** [Oberlandesgericht Wien].

The subsequent analysis will delineate the key aspects of these provisions. However, as the overarching aim of this compendium is to examine their interrelation with national legal frameworks, this remains the primary focus. For the rules governing individual investigative measures, see above Art 30(1) and (4) EPPO Regulation.

1

2

3

2.2. Cooperation and Assignment of Measures (Paragraph 1 and 2)

- 4 Article 31(1) establishes the principle of interjurisdictional cooperation, requiring EDPs to provide mutual assistance and engage in regular consultation in cross-border cases. This provision addresses the complexity of the EPPO's hybrid prosecutorial structure, which operates as a unified institution but must function within the distinct legal frameworks of multiple Member States. EDPs are strictly limited to **their respective national territories**. Consequently, when an investigative measure needs to be executed in another Member State, the handling EDP – the EDP responsible for directing the investigation – must assign the measure to an assisting EDP in the jurisdiction where it is to be carried out.
- 5 Article 31(2) further specifies the scope of the handling EDP's authority, allowing them to adopt **any investigative measure available to them** under Art 30 EPPO Regulation. This includes both the minimum investigative measures listed in Art 30(1) and any additional measures deemed necessary for the investigation under Art 30(4). The process – examined in greater detail below in relation to judicial authorisations – differs significantly from the framework of mutual recognition.
- 6 A key procedural distinction lies in the fact that the assisting EDP **does not operate under national provisions on mutual recognition** when acting upon a request from the handling EDP. While the assisting EDP may, in certain circumstances, seek authorisation from a domestic court and subsequently assess the legality of the measure's execution (for the limitations of this, see the following chapter), this is not governed by the principles of mutual recognition. This is reflected in the wording of the provision, which speaks of “**adoption**” and “**assignment**”, rather than using the traditional wording of “recognition” and “order”.³⁴⁰
- 7 Therefore, the Act on International Judicial Cooperation [zákon o mezinárodní spolupráci ve věcech trestních] is **inapplicable** in defining the scope of recognition for these measures.
- 8 Crucially, the handling EDP **may invoke investigative measures that do not exist within the national legal framework of the assisting EDP's state** (see also Art 31(5)(d) EPPO Regulation, *a contrario*). In such circumstances, the justification, procedural requirements, and legal formalities remain governed exclusively by the legal system of the handling EDP's jurisdiction. This procedural mechanism is of particular relevance where divergences in national legal traditions might otherwise impede investigatory cooperation. Nonetheless, this mechanism must be read in conjunction with Art 31(6) EPPO Regulation (see below).

³⁴⁰ Herrnfeld 2023, p. 374.

2.3. Judicial Authorisation (Paragraph 3)

The issue of judicial authorisation may present a challenge and must be analysed against the backdrop of evolving case law. 9

The term “**judicial authorisation**” is not explicitly defined in the EPPO Regulation, raising questions about which authority’s decision it refers to in practice. Its interpretation should be considered in the context of Framework Decision 2002/584 on the **European Arrest Warrant**, which establishes that such acts must, in principle, be issued by a court judicial authority. 10

This term is then to be read in compliance with **CJEU case law**, including OG v PI (C-508/18, C-82/19 PPU) and C-452/16 PPU (see also Art 33 EPPO Regulation, Chapter 4.5). Specifically, the **Czech public prosecutor** does not satisfy the criteria for being classified as an independent judicial authority and, as such, **cannot be deemed competent** to authorise the measure in instances where judicial authorisation is required.³⁴¹ (see *ibid.*) 11

For specific investigative measures requiring judicial authorisation, refer to the scope of Art 30(1) and (4) EPPO Regulation outlined above. The relevant authorities responsible for both proposing and approving the measure are invariably specified and governed by national codes of criminal procedure. This is particularly relevant for searches of dwellings and searches of other premises [příkaz k prohlídce prostor], as well as for wiretapping warrants. 12

The general principle that the measure requiring judicial authorisation is ordered according to *lex fori* and executed according to *lex loci* applies,³⁴² but not without reservations. Art 31(3) EPPO Regulation establishes the rules governing judicial authorisation in cross-border investigations conducted by the EPPO. If authorisation is required under the law of the **assisting EDP’s Member State**, the assisting EDP must obtain it in accordance with that national law. However, the scope of such authorisation has recently been interpreted and limited by the CJEU, as discussed further below. 13

Conversely, if the assisting EDP’s Member State does not require authorisation, but **the handling EDP’s Member State** does, the handling EDP must obtain and submit the authorisation. However, where both Member States require judicial authorisation, the Regulation stipulates that **only one** authorisation should be necessary, as clarified in Recital 71 EPPO Regulation. In response to this framework, some states have **amended** 14

³⁴¹ Please note that for situations outside of the scope of assigning tasks, which are governed by mutual recognition, the term judicial authority is defined differently in the Act on Judicial Cooperation, including courts, public prosecution offices, and the EPPO, including EDPs, European Prosecutors, and the European Chief Prosecutor, as defined by EU law (s. 2(a) of the Act).

³⁴² Zerbes 2022, p. 1195.

their statutes to ensure that only the assisting EDP's Member State conducts the judicial review, thereby streamlining the process and preventing duplicative legal requirements (see further marg. 21).

- 15 However, this was further interpreted by the CJEU **decision C-281/22** on a preliminary question from **Higher Regional Court in Vienna** [*Oberlandesgericht Wien*], also referred to as *Parquet européen*. This decision provided an interpretation of Art 31(3) EPPO Regulation that extends beyond its literal wording. As such, it may necessitate legislative amendments in certain states accordingly. The case has been described already briefly above (see Part A.I, Chapter 1.1), so only relevant paradigms for Art 31(3) EPPO Regulation will be highlighted.
- 16 An assisting EDP in Austria was to carry out measures assigned by a German EDP. These measures – searches – required judicial authorisation under both German and Austrian law. In this ruling, the CJEU **dismisses the concept of dual reviews**, emphasising that such a system would necessitate a comprehensive examination in two Member States, requiring the translation and availability of all relevant documents. This approach would represent a **regression** from the framework established by Directive 2014/41, which allows the executing Member State to verify only specific formal aspects. Consequently, it would serve no practical purpose.³⁴³ Therefore, a measure which is supposed to be less formal even than the European Investigation Order (hereinafter referred to as “EIO”) would suddenly require a more detailed scrutiny.
- 17 The CJEU delineated the division of roles, assigning the **substantive justification and ordering of the measure to the handling EDP** in the Member State. Conversely, the judicial authority of the **assisting EDP** in the Member State where the measure is executed is **responsible solely for execution-related aspects**, without authority over substantive justification or ordering.³⁴⁴ This approach ensures efficiency and prevents duplicative reviews. Articles 31 and 32 should therefore be read that in cases where judicial authorisation is required in the assisting EDP's Member State, the review may only concern enforcement, while justification and adoption must be assessed in the handling EDP's Member State, particularly when there is significant interference with rights protected by the Charter.³⁴⁵
- 18 The CJEU therefore found *ex post* judicial review under Art 42(1) EPPO Regulation insufficient to protect individuals affected by EPPO measures, particularly when they seriously interfere with privacy or property rights. In such cases, *ex ante* judicial scrutiny

³⁴³ See paragraph 34 of the judgment.

³⁴⁴ See paragraph 72 of the judgment.

³⁴⁵ See paragraph 78 of the judgment.

by the handling EDP's national court is required to allow challenges to the measure's substantive justification.³⁴⁶

The judgment simultaneously addresses all three preliminary questions referred by the Higher Regional Court in Vienna [Oberlandesgericht Wien], which may necessitate further clarification, particularly regarding the second question. Quite notably, the judgment **extends beyond cases where both courts would be required to grant judicial authorisation**. It does not specify that the judicial review of the assisting EDP's state would be limited to execution-related issues only if substantive judicial review has already taken place in the handling EDP's Member State. On the contrary, it suggests that even in situations where authorisation is not required under the handling EDP's law but is mandated by the assisting EDP's law, the judicial review conducted by the assisting EDP's judicial authorities may still confine itself exclusively to enforcement-related matters.³⁴⁷

19

Secondly, the **precise grounds for refusal** remain unclear if judicial examination is confined exclusively to execution-related aspects.³⁴⁸ It is also noteworthy how the judgment engages with the concept of single judicial authorisation as implied in Recital 71 EPPO Regulation. The question remains whether the examination of execution-related aspects alone can be regarded as a comprehensive form of judicial authorisation. This issue is likely to be clarified through future case law, which may provide more precise delineation of the boundaries of execution-related judicial review.

20

And lastly, as previously mentioned, some Member States **may need to amend their statutes to ensure alignment with this framework**. This consideration likely informed the Austrian and German governments' position, which argued that judicial review should be conducted solely by the judicial authorities of the assisting EDP's Member State, rather than the handling EDP – an approach previously adopted, for instance, in the Austrian Bundesgesetz zur Durchführung der Europäischen Staatsanwaltschaft (hereinafter "EUSTA-DG") in its s. 11.

21

As previously noted, the Czech Republic implemented the EPPO framework through an amending law,³⁴⁹ which introduced modifications to existing statutes, including the CCP, the CC, the Act on International Judicial Cooperation, and the Act on Criminal Record. However, rather than establishing a standalone law governing EPPO relations, these amendments were incorporated into existing statutes. Crucially, the Czech implementation did not introduce provisions analogous to s. 11 EUSTA-DG, meaning that **no**

22

³⁴⁶ Ligeti 2024, p. 73.

³⁴⁷ See also Kerschbaummayr 2024, p. 636.

³⁴⁸ See also Mosna 2024, p. 1365–1366.

³⁴⁹ Zákon, kterým se mění zákon č. 283/1993 Sb., o státním zastupitelství, ve znění pozdějších předpisů, zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád), ve znění pozdějších předpisů, zákon č. 40/2009 Sb., trestní zákoník, ve znění pozdějších předpisů, a některé další zákony.

legal issues requiring further adjustments have arisen in light of the CJEU's ruling. As a result, no additional legislative modifications are anticipated.

2.4. Competent National Authorities (Paragraph 4)

- 23 Pursuant to Art 31(4) EPPO Regulation, the assisting EDP may execute the assigned measure either personally or by instructing the competent national authority to carry it out. This provision ensures that the measure is executed in accordance with the legal framework of the assisting EDP's Member State. In the case of the Czech Republic, competent national authorities responsible for such execution are **law enforcement agencies** [*policejní orgán*], as specified in s. 12(2) CCP.³⁵⁰

2.5. Recourse to Mutual Recognition Instruments (Paragraph 6)

- 24 Article 31(6) permits EDPs to utilise instruments of **mutual recognition** or **mutual legal assistance** if the assigned measure is not available under national law for purely domestic cases. It can be understood to mean that the instruments in question apply when the legal framework of the assisting EDP does not know them, rather than in all instances where the act is conducted not by a national authority but by a foreign one (such as an interrogation via videoconference).³⁵¹ Instead, this provision is intended for situations where the national legal framework of the handling EDP does not provide for the measure **at all**.³⁵²
- 25 This safeguard ensures that cross-border investigative measures remain **operational and effective** even when a given measure is not foreseen in the handling EDP's national legal system. In such cases, reference should be made to the **Act on International Judicial Cooperation** [zákon č. 104/2013 Sb., o mezinárodní spolupráci ve věcech trestních].

³⁵⁰ EPPO 2022c, p. 1. On the structure of authorities involved in criminal proceedings [*orgány činné v trestním řízení*], see Part B, Chapter 2.1.

³⁵¹ Klement 2023, p. 30.

³⁵² Ibid.

3. Article 32 Enforcement of Assigned Measures

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

Article 32 EPPO Regulation establishes rules governing **the enforcement of assigned investigative measures** rather than provisions concerning judicial authorisation. The regulation mandates that such measures must be carried out in accordance with the law of the Member State of the assisting EDP, ensuring that cross-border enforcement respects both the Regulation and national legal standards.

1

In the Czech Republic, this implies that measures assigned by a handling EDP from another Member State must be executed in accordance with Czech procedural law. For relevant procedural safeguards under Czech legislation, see in particular the above chapter on Art 30 EPPO Regulation concerning investigative measures and the limitations set out therein. It should also be noted that the Czech Republic has formally notified the EPPO of limitations on the use of certain minimum investigative measures required under Art 30(1) EPPO Regulation (*ibid.*, Chapter 1.5).

2

The second sentence of Art 32 EPPO Regulation mandates that formalities and procedures expressly indicated by the handling EDP of their state be complied with unless such formalities and procedures contravene the fundamental principles of law of the Member State of the assisting EDP. This *ordre public* exception serves as a safeguard against the imposition of foreign procedural rules that may undermine national constitutional or legal principles.

3

Consequently, the assisting EDP is not bound to act upon a foreign public authority's decision according to foreign law if doing so would violate the legal order of their Member State, meaning that they are not compelled to implement the will of the handling EDP, and more importantly, its national rules which are foreign to the assisting EDP.

4

This exception can be read in the Czech Republic in relation to s. 5 of the **Act on International Judicial Cooperation in Criminal Matters**. This prohibits the provision of judicial cooperation if it would contravene the constitutional order (for the term, see above Part A.III, Chapter 1, letter a)) or fundamental legal principles of the Czech Republic (s. 5(1)). Additionally, such cooperation may be denied if it could harm another significant protected interest of the Czech Republic, except in cases governed by Part Five of the Act (s. 5(2)).

5

4. Article 33 Pre-Trial Arrest and Cross-Border Surrender

4.1. Securing Persons: Applicable Statutes in the Czech Republic	292
4.2. Provisions for “Arrest and Pre-Trial Detention” (Paragraph 1)	294
4.2.1. Custody Without Charge	295
a) Custody Without Charge of the Accused by the Law Enforcement Agency	295
b) Custody Without Charge of the Suspect by the Law Enforcement Agency	295
c) Temporary Restriction of the Personal Liberty of the Suspect by Any Other Person	296
4.2.2. A Restraint/Arrest Warrant.....	296
a) A Restraint Warrant for a Suspect.....	296
b) An Arrest Warrant for an Accused.....	297
4.2.3. Custody on Remand	299
4.3. Overview of Measures and Remedies under CCP	304
4.4. Defence in Arrest and Remand	306
4.5. Cross-Border Surrender (Paragraph 2)	307

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.

4.1. Securing Persons: Applicable Statutes in the Czech Republic

- 1 Article 33 EPPO Regulation introduces **two distinct sets of measures**, both serving the same objective: ensuring the presence of the person against whom proceedings are conducted for the purposes of criminal investigation.
- 2 While Art 33(1) pertains to measures concerning **the arrest and detention of the suspect or accused**, Art 33(2) focuses on the application of the **European Arrest Warrant** to ensure the presence of an individual who is currently outside the Member State where the handling EDP is located.
- 3 Given these distinctions, a more detailed discussion will be necessary in relation to paragraph 1, as it requires consideration of national legal specifics. However, a concise discussion of paragraph 2 will also be provided.



When applied in the Czech Republic, both these provisions – despite their procedural differences – share a common foundation in constitutional guarantees. Just as with measures on seizure of items, these safeguards are enshrined in the Charter of Fundamental Rights and Freedoms [Listina základních práv a svobod, vyhlášena formou zvláštního usnesení Předsednictva ČNR č. 2/1993 Sb.], namely in Art 8.

4

Article 8 of the Charter³⁵³

5

(1) Personal freedom is guaranteed.

(2) No one may be prosecuted or deprived of liberty other than for the reasons and in the manner prescribed by law. No one may be deprived of their liberty solely due to an inability to fulfil a contractual obligation.

(3) An accused or suspect of a criminal offence may be remanded in custody without charge only in cases provided for by law. The person must be immediately informed of the reasons for their remand in custody, questioned and either released or handed over to the court within 48 hours at the latest. The judge must interrogate the person within 24 hours of their being brought before the court and decide whether to remand them in custody or release them.

(4) An accused person may be arrested only on the basis of a written, justified warrant issued by a judge. The arrested person must be brought before the court within 24 hours. **The judge must interrogate the arrested person within 24 hours** of their being taken over and decide whether to remand them in custody or release them.

(5) No one may be remanded in custody except for reasons and for a period established by law and only on the basis of a judicial decision.

(6) The law determines in which cases a person may be admitted to or kept in institutional health care without their consent. Such a measure must be notified to the court within 24 hours and the court must decide on the legality of the placement within seven days.

³⁵³ Článek 8

(1) Osobní svoboda je zaručena.

(2) Nikdo nesmí být stíhán nebo zbaven svobody jinak než z důvodů a způsobem, který stanoví zákon. Nikdo nesmí být zbaven svobody pouze pro neschopnost dostát smluvnímu závazku.

(3) Obviněného nebo podezřelého z trestného činu je možno zadržet jen v případech stanovených v zákoně. Zadržaná osoba musí být ihned seznámena s důvody zadržení, vyslechnuta a nejpozději do 48 hodin propuštěna na svobodu nebo odevzdána soudu. Soudce musí zadrženou osobu do 24 hodin od převzetí vyslechnout a rozhodnout o vazbě, nebo ji propustit na svobodu.

(4) Zatknout obviněného je možno jen na písemný odůvodněný příkaz soudce. Zatčená osoba musí být do 24 hodin odevzdána soudu. Soudce musí zatčenou osobu do 24 hodin od převzetí vyslechnout a rozhodnout o vazbě nebo ji propustit na svobodu.

(5) Nikdo nesmí být vzat do vazby, lež z důvodů a na dobu stanovenou zákonem a na základě rozhodnutí soudu.

(6) Zákon stanoví, ve kterých případech může být osoba převzata nebo držena v ústavní zdravotnické péči bez svého souhlasu. Takové opatření musí být do 24 hodin oznámeno soudu, který o tomto umístění rozhodne do 7 dnů.

4.2. Provisions for “Arrest and Pre-Trial Detention” (Paragraph 1)

- 6 All actions outlined in Art 33(1) EPPO Regulation are implemented nationally through the Czech CCP, as there is no European regulation of unified measures of ensuring the presence of persons. Namely, Part One, Chapter 4 [*Část první, Hlava čtvrtá*], ss. 67 et seq. CCP sets out detailed provisions on the conditions, reasons, requirements and limitations for custody on remand [*vazba*]. Furthermore, s. 72a CCP specifies the maximum duration of custody on remand, while s. 73a CCP outlines the procedures for release upon payment of a money guarantee. While certain measures may, under specific circumstances, be applicable to individuals other than suspects and the accused (e.g. witnesses or experts), the following discussion will focus exclusively on measures falling within the scope of Art 33(1), which exclude the last two categories of persons.
- 7 The personal presence of the accused, whether during the investigation, at the main hearing, or for enforcement purposes, is essential for achieving the objectives of criminal proceedings.
- 8 Such measures are not the objective of criminal proceedings, nor do they constitute criminal penalties. Rather, they are **necessary legal means** to achieve the purposes of the proceedings. In particular, the presence of the accused may be ensured through the following measures:
- **Summons** [*předvolání*, s. 90(1) and (2) CCP]
 - **Production of the accused in court** [*předvedení*, s. 90 CCP]
 - A **fine** [*pořádková pokuta*, s. 66(2) and (3) CCP]
 - **Prohibition from travelling abroad** [*zákaz vycestování do zahraničí*, s. 77a CCP]
 - **Custody without charge of the accused** [*zadržení obviněného*, s. 75 CCP] **or of a suspect** [*zadržení podezřelého*, s. 76 CCP]
 - **Restraint/arrest warrant** [*příkaz k zadržení, příkaz k zatčení*, s. 76a CCP, s. 69 CCP respectively]
 - **Custody on remand** [*vazba*, ss. 67–74a CCP]
- 9 With regard to Art 33, the significance of **custody without charge, arrest warrants and custody on remand** should be emphasised. For EDPs and the EPPO, understanding the specifics of these three Czech measures is crucial, as there are strict rules governing who may issue the warrant, the maximum duration of the restraint of freedom and related procedural safeguards. Defence counsel must be well-versed in these rules to ensure that their clients’ rights are not infringed. For the other measures, reference is made to the relevant provisions of the CCP, enabling the reader to consult them directly following the mention of each measure.

4.2.1. Custody Without Charge

Custody without charge, as a precautionary procedural measure, may be used in **urgent cases against** both the **accused** (custody without charge of the accused pursuant to s. 75 CCP) and individuals **suspected** of committing a criminal offence (s. 76 CCP). 10

The essence of this measure lies in the **short-term restriction of personal liberty, initiated by the competent law enforcement agency to assess whether grounds for remand in custody exist**. This does not apply in cases involving the detention of a person caught in the act of committing a crime or immediately afterwards (see below and cf. s. 76(2) CCP). The individual must always be informed of their rights in accordance with the requirements of s. 76b CCP, which include, in particular, the right to choose counsel, to speak with counsel without the presence of a third party and to consult with counsel during the detention. 11

The CCP distinguishes:

a) Custody Without Charge of the Accused by the Law Enforcement Agency 12

Section 75³⁵⁴

If any of the **grounds for remand in custody** specified under **s. 67** are met, the law enforcement agency is authorised to hold the accused in custody without charge. However, it must immediately notify the public prosecutor and provide a copy of the protocol recorded during the custody without charge, along with any other material required for the public prosecutor to determine whether to submit a proposal for remand in custody. The proposal must be filed in such a manner that the accused is brought before the court within **48 hours** of their restriction of liberty; otherwise, the accused must be released.

b) Custody Without Charge of the Suspect by the Law Enforcement Agency 13

Section 76

(1) In urgent cases, a law enforcement agency may hold in custody without charge a person suspected of committing a criminal offence if any of the grounds for remand in custody (s. 67) are given, even if no criminal investigation has yet been initiated against them (s. 160(1)). Custody without charge requires the prior consent of the public prosecutor. Restriction of liberty may be carried out without such consent only if the matter

³⁵⁴ § 75 Zadržení obviněného policejním orgánem

Jestliže je dán některý z důvodů vazby (§ 67), může policejní orgán obviněného zadržet. Je však povinen provedené zadržení státnímu zástupci bezodkladně ohlásit a předat mu opis protokolu, který sepsal při zadržení, i další materiál, který státní zástupce potřebuje, aby popřípadě mohl podat návrh na vzetí do vazby. Návrh musí být podán tak, aby obviněný mohl být nejpozději do 48 hodin od zadržení odevzdán soudu, jinak musí být propuštěn na svobodu.

is urgent and prior consent cannot be obtained, particularly when the individual is caught in the act of committing a crime or attempting to flee.³⁵⁵

c) Temporary Restriction of the Personal Liberty of the Suspect by Any Other Person

14 Section 76

[...]

(2) The liberty of an individual caught in the act of committing a crime or immediately afterward may be restricted by anyone if necessary to establish their identity, prevent escape, or secure evidence. However, the individual must be handed over immediately to a law enforcement agency or, alternatively, a member of the armed forces may be handed over to the nearest armed forces unit or crew administrator. If immediate hand-over is not possible, one of the aforementioned authorities must be notified of the restriction without delay.³⁵⁶

- 15 Finally, it should be noted that **detention of a person by a police officer** pursuant to **s. 26 of the Act on the Police of the Czech Republic** [zákon č. 273/2008 Sb., o Policii České republiky] must be distinguished from custody without charge according to CCP. Although these two types of restricting personal liberty share certain similarities, they do not serve the same purpose. Where the conditions outlined in ss. 75–76 CCP are satisfied, law enforcement agencies must proceed in accordance with the CCP rather than by the provisions of the Act on the Police of the Czech Republic.

4.2.2. A Restraint/Arrest Warrant

16 a) A Restraint Warrant for a Suspect

A restraint warrant may be issued against a suspect (i.e. a person who has not yet been formally accused) if:

17 Section 76a Restraint Warrant

(1)³⁵⁷ If any of the grounds for remand in custody are present and it is not possible to serve the suspect with a copy of the decision on the initiation of criminal investigation,

³⁵⁵ (1) Osobu podezřelou ze spáchání trestného činu může, je-li dán některý z důvodů vazby (§ 67), policejní orgán v naléhavých případech zadržet, i když dosud proti ní nebylo zahájeno trestní stíhání (§ 160 odst. 1). K zadržení je třeba předchozího souhlasu státního zástupce. Bez takového souhlasu lze zadržení provést, jen jestliže věc nesnese odkladu a souhlasu předem nelze dosáhnout, zejména byla-li ona osoba přistižena při trestném činu anebo zastižena na útěku.

³⁵⁶ (2) Osobní svobodu osoby, která byla přistižena při trestném činu nebo bezprostředně poté, smí omezit kdokoli, pokud je to nutné ke zjištění její totožnosti, k zamezení útěku nebo k zajištění důkazů. Je však povinen tuto osobu předat ihned policejnímu orgánu; příslušníka ozbrojených sil může též předat nejbližšímu útvaru ozbrojených sil nebo správci posádky. Nelze-li takovou osobu ihned předat, je třeba některému z uvedených orgánů omezení osobní svobody bez odkladu oznámit.

³⁵⁷ § 76a Příkaz k zadržení

nor summon, produce, or detain the suspect without delay, the judge shall issue a restraint warrant upon the proposal of the public prosecutor.

(2) In addition to data ensuring that the person to be detained will not be confused with another person, the restraint warrant must also provide a detailed explanation of the reasons for issuing the warrant. A copy of the resolution on the initiation of criminal investigation must be attached to the restraint warrant.

(3) Law enforcement agencies are responsible for executing custody without charge based on the restraint warrant and, if necessary, trace the suspect's whereabouts for that purpose.

(4) The law enforcement agency detaining the suspect pursuant to the restraint warrant must immediately deliver to them a copy of the resolution on the initiation of criminal investigation, conduct their interrogation and hand over the interrogation protocol and other evidentiary material to the public prosecutor so that, if necessary, the prosecutor may submit a proposal for remand in custody within 48 hours of the arrest; otherwise, the suspect must be released.

(5) The judge to whom the person is delivered shall proceed appropriately in accordance with s. 77(2).

b) An Arrest Warrant for an Accused

If the **accused** is not available to the authorities involved in criminal proceedings and less severe procedural means described above cannot ensure their presence at the procedural acts, an arrest warrant may be issued. Arrest **involves locating the accused, detaining them and temporarily restricting their personal liberty to enable their delivery to the issuing authority, which will then decide on their remand in custody.**

18

Section 69 Arrest Warrant

(1)³⁵⁸ If any of the grounds for remand in custody are present (s. 67) and the accused cannot be summoned, produced or detained to ensure their presence at a hearing, the

19

(1) Je-li dán některý z důvodů vazby a nelze-li osobě podezřelé ze spáchání trestného činu doručit opis usnesení o zahájení trestního stíhání a takovou osobu nelze předvolat, předvést nebo bez odkladu zadržet, vydá soudce na návrh státního zástupce příkaz k jejímu zadržení.

(2) Příkaz k zadržení musí vedle údajů zajišťujících, že osoba, jež má být zadržena, nebude zaměněna s jinou osobou, obsahovat přesný popis důvodů, pro které se vydává. Připojí se k němu opis usnesení o zahájení trestního stíhání.

(3) Zadržení provedou na podkladě příkazu policejní orgány, které jsou též povinny, pokud je to třeba, vypátrat pobyt podezřelé osoby.

(4) Policejní orgán, který podezřelou osobu na základě příkazu zadržel, je povinen jí neprodleně doručit opis usnesení o zahájení trestního stíhání, vyslechnout ji a s protokolem o jejím výsledku a dalším důkazním materiálem předat státnímu zástupci tak, aby státní zástupce mohl případně podat návrh na její vzetí do vazby do 48 hodin od zadržení; jinak musí být taková osoba propuštěna na svobodu.

(5) Soudce, kterému byla zadržená osoba dodána, dále postupuje přiměřeně podle § 77 odst. 2.

³⁵⁸ § 69 Příkaz k zatčení

judge shall issue a warrant upon the proposal of the public prosecutor in pre-trial proceedings, or the presiding judge shall issue the warrant during proceedings before the court, directing that the accused be arrested.

(2) In addition to identifying information sufficient to prevent confusion with another person, the arrest warrant must contain a brief description of the act for which the accused is being prosecuted, the designation of the criminal offence under consideration and a detailed description of the reasons for issuing the warrant.

(3) Arrests are executed based on the warrant by law enforcement agencies, which are also responsible, if necessary, for implementing the warrant and locating the accused.

(4) An arrested person has the right to choose their defence counsel, consult with them without third-party presence and communicate with them during the arrest. The arrested person may also, at their own expense, send written messages or make telephone calls to a designated person, provided it is technically feasible and does not jeopardise the purpose of the proceedings or the protection of the injured party. This communication may be monitored. An arrested foreign national has the right to have the consular office of their home country notified of the arrest and to communicate with the consular office. If the foreign national lacks financial resources, communication with the consular office

(1) Jestliže je dán některý z důvodů vazby (§ 67) a obviněného nelze předvolat, předvést nebo zadržet a zajistit tak jeho přítomnost u výslechu, vydá v přípravném řízení soudce na návrh státního zástupce a v řízení před soudem předseda senátu příkaz, aby byl obviněný zatčen.

(2) Příkaz k zatčení musí vedle údajů zajišťujících, že obviněný nebude zaměněn s jinou osobou, obsahovat stručný popis skutku, pro nějž je obviněný stíhán, označení trestného činu, který se v tomto skutku spatřuje, a přesný popis důvodů, pro které se příkaz k zatčení vydává.

(3) Zatčení provedou na podkladě příkazu policejní orgány, které jsou též povinny, je-li toho k provedení příkazu třeba, vypátrat pobyt obviněného.

(4) Zatčená osoba má právo zvolit si obhájce, mluvit s ním bez přítomnosti třetí osoby a radit se s ním již v průběhu zatčení. Zatčená osoba má dále právo na své náklady komunikovat prostřednictvím písemných sdělení nebo telefonu s osobou, kterou sama určí, je-li to technicky možné a pokud to okolnosti umožňují, zejména neohrozí-li to dosažení účelu trestního řízení nebo nebrání-li tomu zájem na ochraně oběti; tato komunikace podléhá kontrole. Zatčený cizinec má právo, aby byl o jeho zatčení vyrozuměn konzulární úřad státu, jehož je občanem, a právo na komunikaci s tímto konzulárním úřadem. Nemá-li zatčený cizinec dostatek finančních prostředků, komunikace s konzulárním úřadem se mu umožní bezplatně. O těchto právech je třeba zatčenou osobu poučit a poskytnout jí plnou možnost jejich uplatnění.

(5) Policejní orgán, který obviněného na základě příkazu zatkł, je povinen ho neodkladně, nejpozději však do 24 hodin, dodat soudu, jehož soudce příkaz vydal, nebo na místo umožňující tomuto soudu provést výslech prostřednictvím videokonferenčního zařízení; není-li to výjimečně možné vzhledem k nepředvídatelným okolnostem, musí být obviněný dodán nejpozději 24 hodin od zatčení jinému věcně příslušnému soudu. Nestane-li se tak, musí být obviněný propuštěn na svobodu.

(6) Soudce soudu, který příkaz k zatčení vydal, musí obviněného neprodleně vyslechnout, rozhodnout o vazbě a toto rozhodnutí oznámit obviněnému do 24 hodin od doby, kdy byl obviněný dodán na místo výslechu. Provádí-li výslech obviněného výjimečně jiný věcně příslušný soudce, jemuž byl obviněný dodán vzhledem k nepředvídatelným okolnostem, informuje o jeho výsledku soudce soudu, který příkaz k zatčení vydal. Tento soudce po získání informace o výslechu rozhodne o vazbě a své rozhodnutí oznámí prostřednictvím soudce provádějícího výslech obviněnému. Není-li obviněnému rozhodnutí o vazbě oznámeno do 24 hodin od doby, kdy byl dodán na místo výslechu, musí být propuštěn na svobodu. Obviněný má právo požadovat, aby obhájce byl přítomen při jeho výslechu, pokud je v uvedené lhůtě dosažitelný.

(7) Obviněného, který byl vzat do vazby, dodají do místa výkonu vazby policejní orgány.

is permitted free of charge. The arrested person must be informed of these rights and given a full opportunity to exercise them.

(5) A law enforcement agency that arrests the accused pursuant to a warrant must immediately and no later than within 24 hours, deliver the accused to the court whose judge issued the order or to a location equipped for video-conference interrogation. If this is exceptionally not possible due to unforeseeable circumstances, the accused must be delivered to another competent court within 24 hours. If delivery does not occur within this period, the accused must be released.

(6) The judge of the court issuing the arrest warrant must immediately interrogate the accused, decide on their remand in custody and notify them of the decision within 24 hours of their arrival at the interrogation site. If, due to unforeseeable circumstances, another competent judge conducts the interrogation, they must inform the issuing judge of the outcome. Upon receiving this information, the issuing judge decides on their remand in custody and communicates the decision through the judge who conducted the interrogation. If the accused is not notified of the decision on remand in custody within 24 hours of being brought to the interrogation site, they must be released. The accused may request the presence of defence counsel during the interrogation, provided that the counsel can be reached within the specified period.

(7) Law enforcement agencies are responsible for delivering the accused, who has been remanded in custody, to the designated place of custodial detention.

4.2.3. Custody on Remand

Custody on remand represents the most severe criminal procedural measure imposed on a person who has not yet been convicted of a crime. It is an **extreme and exceptional measure** (*ultima ratio*) adopted by authorities involved in criminal proceedings. Its essence lies in the **temporary deprivation** of the **accused's** personal liberty through a **judicial decision**, with the accused being placed in a facility under the authority of **the Ministry of Justice**. Custody on remand is always subject to a judicial decision.

20

Summary of the legal conditions:

21

- Only the **accused** (a person against whom criminal proceedings have been initiated, see Art 26 EPPO Regulation, Chapter 2.2.6) may be remanded in custody;
- The circumstances meet at least **one of the grounds specified in s. 67(a) to (c)**;
- The court concludes that the facts established thus far **indicate that the act under investigation has been committed, constitutes a criminal offence and there are clear grounds to suspect that the accused committed the offence**;
- At the time of the custody decision, the **purpose** of remand in custody cannot be achieved by **less severe means** (*principle of subsidiarity*);

- The accusation must relate to an **intentional offence punishable by imprisonment exceeding two years**, or a **negligent offence punishable by imprisonment exceeding three years**. This criterion may be modified if the circumstances outlined in **s. 63(3) or (4) CCP** apply;
- Even **when the statutory conditions for custody on remand are formally met, its imposition is not automatic**. The court must assess whether custody on remand is strictly necessary in the given circumstances and whether less restrictive measures (such as bail, supervision, or electronic monitoring) could achieve the same objective (*principle of proportionality*).

22 Section 67 Grounds for Custody on Remand³⁵⁹

The accused may be remanded in custody only if there is reasonable suspicion, based on their actions or other specific facts:

- (a) that they will flee or hide in order to avoid criminal investigation or penalty, especially if their identity cannot be ascertained immediately, if they do not have a permanent residence or if they face a high penalty;
- (b) that they will influence witnesses or co-accused who have not yet been heard or otherwise hinder the clarification of facts important for criminal investigation; or
- (c) that they will repeat the criminal activity for which they are being prosecuted, will commit a criminal offence that they attempted to commit, or will commit a criminal offence that they were preparing or threatened to commit;

and the facts established thus far indicate that the act for which criminal investigation has been initiated was committed, has all the characteristics of a criminal offence and there are clear grounds for suspecting that the accused committed this criminal offence. Furthermore, considering the accused's circumstances, the nature and gravity of the offence and at the time of decision-making, the purpose of custody on remand cannot be achieved by other measures, particularly through the imposition of a preliminary measure.

³⁵⁹ § 67 Důvody vazby

Obviněný smí být vzat do vazby jen tehdy, jestliže z jeho jednání nebo dalších konkrétních skutečností vyplývá důvodná obava,

- a) že uprchne nebo se bude skrývat, aby se tak trestnímu stíhání nebo trestu vyhnul, zejména nelze-li jeho totožnost hned zjistit, nemá-li stálé bydliště anebo hrozí-li mu vysoký trest,
- b) že bude působit na dosud nevyslechnuté svědky nebo spoluobviněné nebo jinak mařit objasňování skutečností závažných pro trestní stíhání, nebo
- c) že bude opakovat trestnou činnost, pro niž je stíhán, dokoná trestný čin, o který se pokusil, nebo vykoná trestný čin, který připravoval nebo kterým hrozil,

a dosud zjištěné skutečnosti nasvědčují tomu, že skutek, pro který bylo zahájeno trestní stíhání, byl spáchán, má všechny znaky trestného činu, jsou zřejmé důvody k podezření, že tento trestný čin spáchal obviněný, a s ohledem na osobu obviněného, povahu a závažnost trestného činu, pro který je stíhán, nelze v době rozhodování účelu vazby dosáhnout jiným opatřením, zejména uložením některého z předběžných opatření.

Section 68³⁶⁰

(1) Only a person against whom criminal proceedings have been initiated may be remanded in custody. The decision to remand in custody must also be justified by factual circumstances.

(2) An accused person prosecuted for an intentional offence, carrying a maximum statutory sentence of imprisonment of no more than two years, or for a criminal offence committed through negligence, carrying a maximum statutory sentence of imprisonment of no more than three years, cannot be remanded in custody.

(3) The restrictions referred to in paragraph 2 shall not be apply if the accused:

(a) has fled or is in hiding;

(b) has repeatedly failed to respond to a summons by failing to appear before the authorities and it has not been possible to compel their attendance or otherwise ensure their participation in the criminal proceedings,

(c) is of unknown identity and their identity could not be established by available means,

(d) has already influenced witnesses or co-accused, or otherwise obstructed the clarification of facts significant for criminal investigation; or

(e) has already repeated the criminal activity for which they are being prosecuted, has continued such criminal activity, or has been convicted or punished for such criminal activity within the last three years.³⁶¹

(4) The restrictions specified in paragraph 2 for an intentional crime shall not apply if there is a reason for custody on remand specified in s. 67(c) and, taking into account the nature of such an offence, the effective protection of the injured party – particularly the

³⁶⁰ § 68

(1) Vztít do vazby lze toliko osobu, proti níž bylo zahájeno trestní stíhání. Rozhodnutí o vazbě musí být odůvodněno též skutkovými okolnostmi.

(2) Vztít do vazby nelze obviněného, který je stíhán pro úmyslný trestný čin, na který zákon stanoví trest odnětí svobody, jehož horní hranice nepřevyšuje dvě léta, nebo pro trestný čin spáchaný z nedbalosti, na který zákon stanoví trest odnětí svobody, jehož horní hranice nepřevyšuje tři léta.

(3) Omezení uvedená v odstavci 2 se neužijí, jestliže obviněný

a) uprchl nebo se skrýval,

b) opakovaně se nedostavil na předvolání a nepodařilo se jej předvést ani jinak zajistit jeho účast při úkonu trestního řízení,

c) je neznámé totožnosti a dostupnými prostředky se ji nepodařilo zjistit,

d) již působil na svědky nebo spoluobviněné nebo jinak mařil objasňování skutečností závažných pro trestní stíhání, nebo

e) již opakoval trestnou činnost, pro niž je stíhán, nebo v takové trestné činnosti pokračoval, nebo byl za takovou trestnou činnost v posledních třech letech odsouzen nebo potrestán.

(4) Omezení uvedená v odstavci 2 pro úmyslný trestný čin se neužijí, jestliže je dán důvod vazby uvedený v § 67 písm. c) a s přihlédnutím k povaze takového trestného činu vyžaduje vzetí do vazby účinná ochrana poškozeného, zejména ochrana jeho života, zdraví nebo jiného obdobného zájmu.

³⁶¹ Under Czech law, the terms “convicted” [*odsouzen*] and “punished” [*potrestán*] carry distinct meanings. A conviction refers to a final court ruling once it becomes legally binding. It does not require the actual execution of the penalty. “Punished”, on the other hand, means that the offender not only received a penalty but also served at least part of it. However, if the penalty is later nullified (e.g. due to rehabilitation provisions), the person is no longer considered convicted. The penalty can take various forms, not just imprisonment – it may include monetary penalties or bans on professional activities.

protection of their life, health, or other similar interests – requires the accused to be remanded in custody.

- 23 With regard to the **duration** of custody on remand, the authorities involved in criminal proceedings are required to prioritise and handle custody cases with the **utmost urgency and efficiency** (s. 2(4) CCP). They must assess at each stage of the proceedings whether the grounds for custody on remand continue to remain valid, whether they have changed, or whether custody on remand can be replaced by the adoption of less intrusive alternative measures (s. 71(1) CCP).
- 24 Custody on remand under the grounds set out in s. 67(b) CCP **may not exceed three months unless it is established that the accused has previously attempted to influence witnesses** – in which case the three-month limitation **does not apply**.
- 25 From the time of the decision to remand the accused in custody becomes legally effective, **a review must be conducted at least every three months** to determine whether the accused should remain remanded in custody or be released. If such a review is not conducted within the prescribed period, the accused must be released by judicial order. For provisions relating to the automatic periodic review of **juvenile custody on remand**, refer to Part A.I, Chapter 1.1 and the ECtHR decision in *Spišák v the Czech Republic*.
- 26 Additionally, during the pre-trial proceedings, the public prosecutor must **submit a proposal** for the judge's decision on continued remand in custody in such a manner that it reaches the court at least 15 days before the expiry of the current three-month period (see s. 72(1) and (2) CCP). The new three-month period is then **calculated from the date to which the decision to extend custody on remand becomes legally effective**.
- 27 The **maximum allowable duration** of custody on remand is regulated by s. 72a CCP, which provides as follows:

28 **Maximum Allowable Duration**

Section 72a

(1)³⁶² Custody on remand may only continue for as long as necessary during both the pre-trial and court proceedings. **The total duration of custody on remand in criminal proceedings must not exceed:**

³⁶² § 72a

(1) Vazba může trvat v přípravném řízení a v řízení před soudem jen nezbytně nutnou dobu. Celková doba trvání vazby v trestním řízení nesmí přesáhnout

a) jeden rok, je-li vedeno trestní stíhání pro přečin,

b) dva roky, je-li vedeno trestní stíhání pro zločin,

c) tři roky, je-li vedeno trestní stíhání pro zvlášť závažný zločin,

- (a) **one year**, if the criminal investigation concerns a misdemeanour;
 - (b) **two years**, if the criminal investigation concerns a felony;
 - (c) **three years**, if the criminal investigation concerns a particularly serious felony;
 - (d) **four years**, if the criminal investigation concerns a particularly serious felony for which an exceptional penalty may be imposed under the Criminal Code.
- (2) **One third** of the period specified in paragraph 1 is allocated for the **pre-trial proceedings** and **two thirds for proceedings before the court**. If either the pre-trial or court proceedings are not concluded within the respective time limits, the accused must be released from custody on remand on the last day of the applicable period. Where the accused is prosecuted for two or more criminal acts, the most serious offence shall determine the applicable time limit. If the offence for which the investigation has been initiated is different and the duration of custody on remand has already exceeded the prescribed time limit for either pre-trial or court proceedings, the accused must be immediately released.
- (3) Custody on remand based on the grounds set out in s. 67(b) may not exceed three months. If the accused, who is not remanded in custody for any other reason, has not been released by the expiry of this period, they must be released no later than the last day of the prescribed period. However, if it is established that the accused has influenced witnesses or co-accused, or otherwise obstructed the clarification of facts significant to the criminal investigation (s. 68(3)(d)), the judge, upon the prosecutor's proposal, may extend the remand in custody beyond the prescribed period during the pre-trial proceedings. After the indictment is filed or a plea agreement is proposed, such a decision must be made by the court.

d) čtyři roky, je-li vedeno trestní stíhání pro zvlášť závažný zločin, za který lze podle trestního zákona uložit výjimečný trest.

(2) Z doby uvedené v odstavci 1 připadá jedna třetina na přípravné řízení a dvě třetiny na řízení před soudem. Není-li přípravné řízení nebo řízení před soudem před uplynutím této doby skončeno, musí být nejpozději v poslední den této lhůty obviněný propuštěn z vazby. Je-li obviněný stíhán pro dva nebo více trestných činů, je pro určení této doby rozhodující čin nejprísněji trestný. Je-li skutek, pro který bylo zahájeno trestní stíhání, jiným trestným činem, a délka vykonané vazby již přesáhla dobu stanovenou pro přípravné řízení nebo řízení před soudem, obviněný musí být neprodleně propuštěn z vazby.

(3) Vazba z důvodu uvedeného v § 67 písm. b) může trvat nejdéle tři měsíce. Nebyl-li obviněný, který není ve vazbě současně i z jiného důvodu, propuštěn z vazby před uplynutím lhůty uvedené ve větě první, musí být propuštěn nejpozději poslední den této lhůty. Bylo-li zjištěno, že obviněný již působil na svědky nebo spoluobviněné nebo jinak mařil objasňování skutečností závažných pro trestní stíhání [§ 68 odst. 3 písm. d)], rozhodne o ponechání obviněného ve vazbě nad stanovenou lhůtu v přípravném řízení na návrh státního zástupce soudce a po podání obžaloby nebo návrhu na schválení dohody o vině a trestu soud.

(4) Doba trvání vazby se počítá ode dne, kdy došlo k omezení osobní svobody obviněného. Při vrácení věci státnímu zástupci k došetření pokračuje běh lhůty, která připadá na přípravné řízení, ode dne, kdy byl spis doručen státnímu zástupci.

(5) Doba trvání vazby, o níž bylo rozhodnuto v řízení o dovolání (§ 265l odst. 4 a § 265o odst. 2), o stížnosti pro porušení zákona (§ 275 odst. 3), o návrhu na povolení obnovy řízení (§ 282 odst. 2 a § 287), po zrušení výroku o trestu nálezem Ústavního soudu (§ 314k odst. 1) nebo v řízení o výkonu trestu vyhoštění (§ 350c odst. 1), se posuzuje samostatně a nezávisle na vazbě v původním řízení. Ustanovení věty první se užije obdobně na vazbu v řízení podle zákona o mezinárodní justiční spolupráci ve věcech trestních.

(4) The duration of custody on remand is calculated from the date on which the accused's personal freedom was initially restricted. If the case is returned to the public prosecutor for further investigation, the time limit for pre-trial proceedings resumes from the date the case file is delivered to the public prosecutor.

(5) The duration of custody on remand ordered during appellate proceedings (s. 265l(4) and s. 265o(2)), on a complaint for violation of the law (s. 275(3)), on an application for a retrial (s. 282(2) and s. 287), following the annulment of a judgment on a penalty by a decision of the Constitutional Court (s. 314k(1)), or during proceedings concerning the execution of a deportation sentence (s. 350c(1)), is assessed separately and independently of the custody on remand imposed in the original proceedings. The provision of the first sentence shall apply similarly to custody on remand in proceedings conducted under the Act on International Judicial Cooperation in Criminal Matters.

Section 71a Request for Release from Custody on Remand³⁶³

The accused has the right to apply for release at any time after the decision on remand in custody has become final. A request for release shall also be considered a request for the adoption of an alternative measure in lieu of custody on remand. Such a request must be decided without undue delay. If the application is rejected, the accused may not submit a repeat application, unless based on different grounds, until 30 days have elapsed from the date on which the last decision rejecting their application for release from custody on remand or deciding on the continuation of custody on remand or on the modification of the grounds for custody on remand became final.

- 29 Custody on remand can be at **any time substituted by measures listed under ss. 73–73a CCP**. Decisions on remand in custody (as listed in s. 74(1) CCP) have the form of a **resolution**, which may be contested by means of a **complaint**.³⁶⁴ This, however, does not in principle have a suspensive effect.

4.3. Overview of Measures and Remedies under CCP

- 30 Although every effort has been made to include the relevant provisions and details concerning Art 33(1) EPPO Regulation and the corresponding measures under the CCP, the following overview highlights the key elements relevant to decisions and available remedies for both the prosecution and the defence.

³⁶³ § 71a Žádost o propuštění z vazby

Obviněný má právo kdykoli po právní moci rozhodnutí o vzetí do vazby žádat o propuštění z vazby. Za žádost o propuštění z vazby se považuje i návrh obviněného na přijetí některého z opatření nahrazujících vazbu. O takové žádosti musí být rozhodnuto bez zbytečného odkladu. Byla-li žádost zamítnuta, může ji obviněný, neuvede-li v ní jiné důvody, opakovat až po uplynutí 30 dnů od právní moci posledního rozhodnutí, kterým byla zamítnuta jeho žádost o propuštění z vazby, nebo kterým bylo rozhodnuto o dalším trvání vazby nebo o změně důvodů vazby.

³⁶⁴ Please note the distinction between a complaint [*stížnost*] and a criminal complaint [*trestní oznámení*], as discussed under Part B.II, Art 26 EPPO Regulation, Chapter 2.2.7, letter c, i).

Table 16: Investigative Measures Under Art 33(1) EPPO Regulation

Restrictive measure	Form of decision	Remedy and time limit	Other forms of defence and frequency of application
Summons [<i>předvolání</i>] (s. 90(1) and (2) CCP)	Measure [<i>opatření</i>] as a form of decision <i>sui generis</i> [rozhodnutí <i>sui generis</i>]	No	-
Production of the accused in court [<i>předvedení</i>] (s. 90 CCP)	Measure [<i>opatření</i>] as a form of decision <i>sui generis</i> [rozhodnutí <i>sui generis</i>]	No	-
A fine [<i>pořádková pokuta</i>] (s. 66(2) and (3) CCP)	Resolution [<i>usnesení</i>]	Yes; complaint [<i>stížnost</i>]; 3 days ³⁶⁵	-
Prohibition from travelling abroad [<i>zákaz vycestování do zahraničí</i>] (s. 77a CCP)	Resolution [<i>usnesení</i>]	Yes; complaint [<i>stížnost</i>]; 3 days ³⁶⁶	Request for lifting the prohibition [<i>žádost o zrušení</i>]; every 3 months ³⁶⁷
Custody without charge (an accused) [<i>zadržení obviněného</i>] (s. 75 CCP)	Measure [<i>opatření</i>] as a form of decision <i>sui generis</i> [rozhodnutí <i>sui generis</i>]	No	-
Custody without charge (a suspect) [<i>zadržení podezřelého</i>] (s. 76 CCP)	Measure [<i>opatření</i>] as a form of decision <i>sui generis</i> [rozhodnutí <i>sui generis</i>]	No	-
Restraint warrant [<i>příkaz k zadržení</i>] (s. 76a CCP)	Warrant [<i>příkaz</i>] as a form of decision <i>sui generis</i> [rozhodnutí <i>sui generis</i>]	No	-
Arrest warrant [<i>Příkaz k zatčení</i>] (s. 69 CCP)	Warrant [<i>příkaz</i>] as a form of decision <i>sui</i>	No	-

³⁶⁵ The complaint suspends the effect of the decision.

³⁶⁶ The complaint does not suspend the effect of the decision.

³⁶⁷ Please note the time limit set out in s. 77a(4) CCP: [...] An accused person subject to this restriction has the right to request its lifting at any time. The presiding judge, or in pre-trial proceedings, the public prosecutor, must decide on such a request without undue delay. A complaint may be lodged against this decision. If the request is denied, the accused may submit a new request only after three months from the date the decision becomes final, unless they present new grounds for the request.

Art 33 EPPO Regulation

	<i>generis</i> [rozhodnutí sui generis]		
Custody on remand [vazba] (s. 67–74a CCP)	Resolution [<i>usnesení</i>]	Yes; complaint [<i>stížnost</i>]; 3 days ³⁶⁸	Request for release [<i>žádost o pro- puštění</i>]; every 30 days ³⁶⁹

Source: The authors.

4.4. Defence in Arrest and Remand

- 31 If the suspect or the accused is remanded in custody, they must have access to defence counsel. This constitutes one of the situations foreseen by national law under s. 36a(1)(b) CCP and represents a case of mandatory defence (in detail on participation of defence counsel, see Art 26 EPPO Regulation, Chapter 2.2.7, letters d), e)). Pursuant to the Czech CCP, defence counsel may lodge a complaint against a judicial decision concerning remand in custody:

- 32 **Section 74 Complaint Against the Decision on Remand in Custody³⁷⁰**
- (1) A complaint against a decision on remand in custody (ss. 68, 69, 71, 71a, 72, 72a(3), 73 and 73a) is admissible. The provisions on custodial hearing (ss. 73d–73g) apply correspondingly to the decision on a complaint regarding custody.
- (2) Only complaints filed by the parties against a decision on the forfeiture of a monetary guarantee to the state and complaints filed by the public prosecutor against a decision to release the accused from custody on remand, have suspensive effect. However, if the release from custody on remand follows the pronouncement of an acquittal and the public prosecutor was present at the time of the decision's pronouncement, their complaint will have suspensive effect only if filed immediately after the decision was announced.

³⁶⁸ The complaint does not suspend the effect of the decision on remand in custody.

³⁶⁹ Please note the procedure set out in s. 71a CCP and time limits therein: An accused person has the right to request release from custody on remand at any time after the decision on remand becomes final. A request for release is also deemed to include a motion for the adoption of an alternative measure to replace custody on remand. Such a request must be decided without undue delay. If the request is denied, the accused may submit a new request only after 30 days from the date the final decision rejecting their previous request for release was issued or from the date a decision was made on the continuation or modification of custody grounds, unless new reasons are provided in the request.

³⁷⁰ § 74 Stížnost proti rozhodnutí o vazbě

(1) Proti rozhodnutí o vazbě (§ 68, 69, 71, 71a, 72, § 72a odst. 3, § 73 a 73a) je přípustná stížnost. Na rozhodování o stížnosti proti rozhodnutí o vazbě se obdobně užijí ustanovení o vazebním zasedání (§ 73d až 73g).

(2) Odkladný účinek má pouze stížnost stran proti rozhodnutí o případnutí peněžitě záruky státu a stížnost státního zástupce proti rozhodnutí o propuštění obviněného z vazby, nejde-li o propuštění z vazby po vyhlášení zprošťujícího rozsudku. Byl-li však státní zástupce přítomen při vyhlášení rozhodnutí, má jeho stížnost odkladný účinek jen tehdy, byla-li podána ihned po vyhlášení rozhodnutí.

(3) Rozhodne-li soud na základě stížnosti o zrušení rozhodnutí o vzetí obviněného do vazby nebo o dalším trvání vazby [§ 149 odst. 1 písm. b)], může věc vrátit k novému projednání a rozhodnutí pouze z důvodu závažných vad rozhodnutí. V takovém případě musí být obviněný neprodleně propuštěn z vazby.

(3) If, upon review of a complaint, the court cancels the decision to remand the accused or to continue their custody (s. 149(1)(b)), it may only return the matter for reconsideration and a new decision in cases where the original decision was affected by serious defects. In such circumstances, the accused must be immediately released from custody on remand.

4.5. Cross-Border Surrender (Paragraph 2)

If the EDP is responsible for issuing or submitting a request for a European Arrest Warrant (hereinafter “EAW”), they must strictly adhere to the specificities of national law. In the **Czech Republic**, the authority to issue an EAW rests **exclusively with the court**, as mandated by s. 190(a) of the Act on International Judicial Cooperation in Criminal Matters.³⁷¹

The competent judicial authority depends on the procedural stage: during **trial proceedings**, the decision is made by the **presiding judge** of the adjudicating bench; in **pre-trial proceedings**, it is the **judge of the district court** in whose jurisdiction the EDP who submitted the request for the issuance of the EAW is based.³⁷² Furthermore, in accordance with s. 193 CCP, in pre-trial proceedings, the court issues an EAW **only on the proposal of the public prosecutor**. If the proposal is denied, the court must provide justification for its decision.

This exclusive judicial competence stands in contrast to systems where the term “**judicial authority**” under Art 6(1) of Framework Decision 2002/584/JHA has been broadened to include entities beyond courts. The CJEU’s jurisprudence confirms that while public prosecutors may, under certain conditions, qualify as judicial authorities, this classification is subject to conditions. The **Austrian and German models** illustrate the boundaries of prosecutorial involvement in issuing EAWs and the necessary procedural safeguards that accompany such authority. If a similar framework were to be considered in the Czech Republic, the paradigm enabling it would not hold, for reasons briefly outlined below.

The **role of public prosecutors in issuing EAWs** has been particularly contentious in EU law, primarily due to concerns over executive influence. The CJEU addressed this in OG and PI (joined cases C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456) in the context of Germany, and in NJ (case C-489/19 PPU, ECLI:EU:C:2019:849) with regard to Austria. There, the **key legal distinction** lies in the **relationship between prosecutorial independence and judicial oversight**.

³⁷¹ See s. 190(a) of the Act on International Judicial Cooperation in Criminal Matters [zákon č. 104/2013 Sb., o mezinárodní justiční spolupráci ve věcech trestních].

³⁷² EPPO 2022c, p. 1.

- 37 In **Germany**, public prosecutors [*Staatsanwälte*] operate within the executive branch and are subject to a hierarchical system of instructions [*Weisungsrecht*] from the Ministry of Justice, rendering them **incapable of being classified as an issuing judicial authority**. **Austrian** prosecutors, though also integrated to a broader system, function within a **structurally distinct process** where judicial **endorsement** [*gerichtliche Bewilligung*] is a mandatory safeguard before an EAW takes effect.
- 38 The German and Austrian cases highlight that prosecutorial independence is not solely a question of formal institutional separation but also of procedural safeguards that ensure decisions are free from political influence. The **Czech model**, however, diverges further, endorsing **even less prosecutorial involvement** – allowing public prosecutors only to **propose** the issuance of an EAW, not to issue one themselves. Accordingly, this stricter separation suggests a deliberate legislative choice to uphold the judiciary’s exclusive role in cross-border surrender procedures.
- 39 It should be noted that this case law cannot be extended to all situations where EU (criminal) law refers to judicial authorities. In particular, regarding the EIO, the CJEU has taken a broader approach. In **Staatsanwaltschaft Wien v A. and Others** (C-584/19, ECLI:EU:C:2020:1002), the Court held that public prosecutors **may act** as issuing authorities, as the definition within the EIO Directive (Directive 2014/41/EU) is more inclusive than that of the EAW framework.

III. Annexes to Part B of the Czech Chapter

1. Annex I: General Provisions of the Criminal Code

Before introducing the individual PIF offences, it is necessary to briefly address certain interpretative provisions of the General Part of the Criminal Code, such as those concerning the determination of the threshold for damage, which are of particular relevance to PIF offences and property-related criminal offences.

Section 135a Instrument of Criminal Activity³⁷³

An instrument of criminal activity refers to an item that has been designated or used to commit a criminal offence, including its proceeds and benefits.

Section 135b Proceeds of Criminal Activity³⁷⁴

(1) Proceeds of criminal activity refer to any economic advantage derived from a criminal offence.

(2) Direct proceeds of criminal activity refer to an item obtained through a criminal offence or as a reward for it, including its proceeds and benefits.

(3) Indirect proceeds of criminal activity refer to an item, including its proceeds and benefits;

(a) that has been, even partially, acquired in exchange for an item constituting direct proceeds of criminal activity;

(b) into which an item constituting direct proceeds of criminal activity has been, even partially, converted; or

(c) whose value has been, even partially, increased through an item constituting direct proceeds of criminal activity.

Section 138 Limits on the Amount of Damage, Benefit, Costs to Remedy Environmental Damage and the Value of Property

(1)³⁷⁵ For the purposes of this Act, the following damage thresholds are established:

³⁷³ § 135a **Nástroj trestné činnosti**

Nástrojem trestné činnosti se rozumí věc, která byla určena nebo užita ke spáchání trestného činu, včetně plodů a užitků.

³⁷⁴ § 135b **Výnos z trestné činnosti**

(1) Výnosem z trestné činnosti se rozumí jakákoli ekonomická výhoda pocházející z trestného činu.

(2) Bezprostředním výnosem z trestné činnosti se rozumí věc, která byla získána trestným činem nebo jako odměna za něj, včetně plodů a užitků.

(3) Zprostředkovaným výnosem z trestné činnosti se rozumí věc, včetně plodů a užitků,

a) která byla, byť jen zčásti, nabyta za věc tvořící bezprostřední výnos z trestné činnosti,

b) ve kterou byla věc tvořící bezprostřední výnos z trestné činnosti, byť jen zčásti, přeměněna, nebo

c) k jejímuž zhodnocení došlo, byť jen zčásti, prostřednictvím věci tvořící bezprostřední výnos z trestné činnosti.

³⁷⁵ § 138 **Hranice výše škody, prospěchu, nákladů k odstranění poškození životního prostředí a hodnoty věci**

(1) Pro účely tohoto zákona se rozumí

a) škodou nikoli nepatrnou škoda dosahující částky nejméně 10000 Kč,

Annex I

- (a) Damage which is not insignificant: at least CZK 10,000;
- (b) Minor damage: at least CZK 50,000;
- (c) Greater damage: at least CZK 100,000;
- (d) Substantial damage: at least CZK 1,000,000;
- (e) Extensive damage: at least CZK 10,000,000;
- (2) The amounts specified in paragraph 1 shall apply *mutatis mutandis* to determining the amount of benefit, the cost of remedying the consequences of environmental damage and the value of property.

b) škodou nikoli malou škoda dosahující částky nejméně 50000 Kč,

c) větší škodou škoda dosahující částky nejméně 100000 Kč,

d) značnou škodou škoda dosahující částky nejméně 1000000 Kč a

e) škodou velkého rozsahu škoda dosahující částky nejméně 10000000 Kč.

(2) Částek uvedených v odstavci 1 se užije obdobně pro určení výše prospěchu, nákladů k odstranění následků poškození životního prostředí a hodnoty věci.

2. Annex II: PIF Offences

This annex includes all PIF offences as notified under the EPPO framework, all of which are set out in the Czech Criminal Code rather than in any ancillary statutes.³⁷⁶ It is worth noting that, despite the existence of this notification, both academic and practical debates occasionally arise – sometimes even resulting in variations in the listed offences. However, where such cases involve inextricably linked offences, this does not present a problem.



Section 206 Embezzlement³⁷⁷

(1) Whoever appropriates property entrusted to them, belonging to another and thereby causes damage to another's property not considered insignificant, shall be punished by imprisonment for up to two years, a prohibition of activities, or a forfeiture of things or other valuables.

(2) The offender shall be punished by imprisonment for six months to three years if they commit the act described in paragraph 1 and have been convicted or punished for such an act within the last three years.³⁷⁸

(3) Imprisonment for one to five years, or a monetary penalty, shall be imposed on the offender if they cause greater damage by committing the act described in paragraph 1.

(4) The offender shall be punished by imprisonment for two to eight years, if they

- (a) commit the act described in paragraph 1 as a member of an organised group;
- (b) commit such an act as a person with a particular obligation to defend the interests of the injured party;

³⁷⁶ EPPO 2022c.

³⁷⁷ § 206 Zpronevěra

(1) Kdo si присvojí cizí věc, která mu byla svěřena, a způsobí tak na cizím majetku škodu nikoli nepatrnou, bude potrestán odnětím svobody až na dvě léta, zákazem činnosti nebo propadnutím věci.

(2) Odnětím svobody na šest měsíců až tři léta bude pachatel potrestán, spáchá-li čin uvedený v odstavci 1 a byl-li za takový čin v posledních třech letech odsouzen nebo potrestán.

(3) Odnětím svobody na jeden rok až pět let nebo peněžitým trestem bude pachatel potrestán, způsobí-li činem uvedeným v odstavci 1 větší škodu.

(4) Odnětím svobody na dvě léta až osm let bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 jako člen organizované skupiny,

b) spáchá-li takový čin jako osoba, která má zvlášť uloženou povinnost hájit zájmy poškozeného,

c) spáchá-li takový čin za stavu ohrožení státu nebo za válečného stavu, za živelní pohromy nebo jiné události vážně ohrožující život nebo zdraví lidí, veřejný pořádek nebo majetek, nebo

d) způsobí-li takovým činem značnou škodu.

(5) Odnětím svobody na pět až deset let bude pachatel potrestán,

a) způsobí-li činem uvedeným v odstavci 1 škodu velkého rozsahu, nebo

b) spáchá-li takový čin v úmyslu umožnit nebo usnadnit spáchání teroristického trestného činu, trestného činu financování terorismu (§ 312d) nebo vyhrožování teroristickým trestným činem (§ 312f).

(6) Příprava je trestná.

³⁷⁸ Under Czech law, the terms “convicted” [odsouzen] and “punished” [potrestán] carry distinct meanings. A conviction refers to a final court ruling once it becomes legally binding. It does not require the actual execution of the penalty. “Punished”, on the other hand, means that the offender not only received a penalty but also served at least part of it. However, if the penalty is later nullified (e.g. due to rehabilitation provisions), the person is no longer considered convicted. The penalty can take various forms, not just imprisonment – it may include monetary penalties or bans on professional activities.

(c) commit such an act during a state of national emergency or war, natural disaster, or another event seriously threatening the life or health of people, public order, or property; or

(d) cause substantial damage by such an act.

(5) The offender shall be punished by imprisonment for five to ten years, if they

(a) cause extensive damage by committing the act described in paragraph 1; or

(b) commit such an act to facilitate or enable commission of a terrorist criminal offence, the crime of financing terrorism (s. 312d), or threatening a terrorist crime (s. 312f).

(6) Preparation of this offence constitutes a criminal offence.

2 Section 209 Fraud³⁷⁹

(1) Whoever enriches themselves or another by inducing error in someone, exploiting someone's error, or concealing material facts and thereby causing damage to another's property that is not insignificant, shall be sentenced to imprisonment for up to two years, a prohibition of activities, or a forfeiture of things or other valuables.

(2) An offender shall be sentenced to imprisonment for six months to three years if they commit the act described in paragraph 1 and have been convicted or punished for such an act within the past three years.³⁸⁰

(3) An offender shall be sentenced to imprisonment for one to five years or to a monetary penalty if they cause greater damage by committing the act described in paragraph 1.

(4) An offender shall be sentenced to imprisonment for two to eight years, if they

(a) commit the act described in paragraph 1 as a member of an organised group;

³⁷⁹ § 209 Podvod

(1) Kdo sebe nebo jiného obohatí tím, že uvede někoho v omyl, využije něčího omylu nebo zamlčí podstatné skutečnosti, a způsobí tak na cizím majetku škodu nikoli nepatrnou, bude potrestán odnětím svobody až na dvě léta, zákazem činnosti nebo propadnutím věci.

(2) Odnětím svobody na šest měsíců až tři léta bude pachatel potrestán, spáchá-li čin uvedený v odstavci 1 a byl-li za takový čin v posledních třech letech odsouzen nebo potrestán.

(3) Odnětím svobody na jeden rok až pět let nebo peněžitým trestem bude pachatel potrestán, způsobí-li činem uvedeným v odstavci 1 větší škodu.

(4) Odnětím svobody na dvě léta až osm let bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 jako člen organizované skupiny,

b) spáchá-li takový čin jako osoba, která má zvlášť uloženou povinnost hájit zájmy poškozeného,

c) spáchá-li takový čin za stavu ohrožení státu nebo za válečného stavu, za živelní pohromy nebo jiné události vážně ohrožující život nebo zdraví lidí, veřejný pořádek nebo majetek, nebo

d) způsobí-li takovým činem značnou škodu.

(5) Odnětím svobody na pět až deset let bude pachatel potrestán,

a) způsobí-li činem uvedeným v odstavci 1 škodu velkého rozsahu, nebo

b) spáchá-li takový čin v úmyslu umožnit nebo usnadnit spáchání teroristického trestného činu, trestného činu financování terorismu (§ 312d) nebo vyhrožování teroristickým trestným činem (§ 312f).

(6) Příprava je trestná.

³⁸⁰ Under Czech law, the terms “convicted” [odsouzen] and “punished” [potrestán] carry distinct meanings. A conviction refers to a final court ruling once it becomes legally binding. It does not require the actual execution of the penalty. “Punished”, on the other hand, means that the offender not only received a penalty but also served at least part of it. However, if the penalty is later nullified (e.g. due to rehabilitation provisions), the person is no longer considered convicted. The penalty can take various forms, not just imprisonment – it may include monetary penalties or bans on professional activities.

- (b) commit such an act as a person with a particular obligation to defend the interests of the injured party;
 - (c) commit such an act during a state of national emergency or war, a natural disaster, or another event seriously threatening the life or health of people, public order, or property; or
 - (d) cause substantial damage by such an act.
- (5) An offender shall be sentenced to imprisonment for five to ten years, if they
- (a) cause extensive damage by committing the act described in paragraph 1; or
 - (b) commit such an act to facilitate or enable the commission of a terrorist offence, the crime of financing terrorism (s. 312d), or threatening a terrorist crime (s. 312f).

Section 212 Subsidy Fraud³⁸¹

3

- (1) Any person who, in an application for a subsidy, grant, repayable financial assistance, or contribution, provides false or grossly misrepresented information or conceals relevant facts shall be sentenced to imprisonment for up to two years or a prohibition of activities.
- (2) The same penalty shall apply to any person who misuses, on a minor scale, funds obtained through a targeted subsidy, grant, repayable financial assistance, or contribution for purposes other than those intended.
- (3) An offender who commits an offence under paragraph 1 or 2 and has been convicted or sentenced³⁸² for such an offence within the past three years shall be liable to a term of six months to three years' imprisonment.

³⁸¹ § 212 Dotační podvod

- (1) Kdo v žádosti o poskytnutí dotace, subvence nebo návratné finanční výpomoci nebo příspěvku uvede nepravdivé nebo hrubě zkreslené údaje nebo podstatné údaje zamlčí, bude potrestán odnětím svobody až na dvě léta nebo zákazem činnosti.
- (2) Stejně bude potrestán, kdo použije, v nikoli malém rozsahu, prostředky získané účelovou dotací, subvencí nebo návratnou finanční výpomocí nebo příspěvkem na jiný než určený účel.
- (3) Odnětím svobody na šest měsíců až tři léta bude pachatel potrestán, spáchá-li čin uvedený v odstavci 1 nebo 2 a byl-li za takový čin v posledních třech letech odsouzen nebo potrestán.
- (4) Odnětím svobody na jeden rok až pět let nebo peněžitým trestem bude pachatel potrestán, způsobí-li činem uvedeným v odstavci 1 nebo 2 větší škodu.
- (5) Odnětím svobody na dvě léta až osm let bude pachatel potrestán,
- a) spáchá-li čin uvedený v odstavci 1 nebo 2 jako člen organizované skupiny,
 - b) spáchá-li takový čin jako osoba, která má zvlášť uloženou povinnost hájit zájmy poškozeného, nebo
 - c) způsobí-li takovým činem značnou škodu.
- (6) Odnětím svobody na pět až deset let bude pachatel potrestán,
- a) způsobí-li činem uvedeným v odstavci 1 nebo 2 škodu velkého rozsahu, nebo
 - b) spáchá-li takový čin v úmyslu umožnit nebo usnadnit spáchání teroristického trestného činu, trestného činu financování terorismu (§ 312d) nebo vyhrožování teroristickým trestným činem (§ 312f).
- (7) Příprava je trestná.

³⁸² Under Czech law, the terms “convicted” [odsouzen] and “punished” [potrestán] carry distinct meanings. A conviction refers to a final court ruling once it becomes legally binding. It does not require the actual execution of the penalty. “Punished”, on the other hand, means that the offender not only received a penalty but also served at least part of it. However, if the penalty is later nullified (e.g. due to rehabilitation provisions), the person is no longer considered convicted. The penalty can take various forms, not just imprisonment – it may include monetary penalties or bans on professional activities.

(4) An offender shall be liable to one to five years' imprisonment or a monetary penalty if their offence under paragraph 1 or 2 causes greater damage.

(5) An offender shall be liable to two to eight years' imprisonment if:

(a) they commit an offence under paragraph 1 or 2 as a member of an organised group,
(b) they commit such an offence while being under a special duty to protect the interests of the injured party; or

(c) their actions cause substantial damage.

(6) An offender shall be liable to five to ten years' imprisonment if:

(a) their actions cause extensive damage; or

(b) they commit such an offence to facilitate or enable the commission of a terrorist offence, the offence of financing terrorism (s. 312d), or the offence of making terrorist threats (s. 312f).

(7) The preparation of this offence shall be punishable.

4 Section 216 Money Laundering³⁸³

(1) Any person who conceals, transfers on themselves or other person, stores, or uses an asset obtained as proceeds of crime committed in the Czech Republic or abroad by another person;

transforms such an asset with the intent to enable another person to evade criminal investigation, penalty, or protective measures; or

conspires to commit such offence;

shall be liable to up to four years' imprisonment, a monetary penalty, a prohibition of activities, or a forfeiture of things or other valuables.

(2) Any person who disguises the origin of an asset obtained as proceeds of crime, in particular by concealing or misrepresenting its true nature, location, movement, ownership, or related rights, or who otherwise seeks to make it more difficult or impossible to establish its origin; or

engages in conspiracy to commit such offence;

shall be liable to six months to five years' imprisonment, a monetary penalty, a prohibition of activities, or a forfeiture of things or other valuables.

³⁸³ § 216 Legalizace výnosů z trestné činnosti

(1) Kdo ukryje, na sebe nebo na jiného převede, přechovává nebo užívá věc, která je výnosem z trestné činnosti spáchané na území České republiky nebo v cizině jinou osobou, nebo

kdo takovou věc přemění v úmyslu umožnit jiné osobě, aby unikla trestnímu stíhání, trestu nebo ochrannému opatření nebo jejich výkonu, nebo

kdo se ke spáchání takového trestného činu spolčí,

bude potrestán odnětím svobody až na čtyři léta, peněžitým trestem, zákazem činnosti nebo propadnutím věci.

(2) Kdo zastírá původ věci, která je výnosem z trestné činnosti spáchané na území České republiky nebo v cizině, zejména tím, že zakrývá nebo utajuje její skutečnou povahu, umístění, pohyb, nakládání s ní, vlastnické nebo jiné právo k ní, nebo kdo jinak usiluje, aby bylo podstatně ztíženo nebo znemožněno zjištění jejího původu, nebo

kdo se ke spáchání takového trestného činu spolčí,

bude potrestán odnětím svobody na šest měsíců až pět let, peněžitým trestem, zákazem činnosti nebo propadnutím věci.

(3)³⁸⁴ An offender shall be liable to one to six years' imprisonment or a monetary penalty if:

- (a) the offence under paragraph 1 or 2 relates to an asset derived from a felony;
- (b) the offence concerns an asset of greater value; or
- (c) the offender derives substantial benefit for themselves or another person.

(4) An offender shall be liable to two to eight years' imprisonment or a forfeiture of things or other valuables if:

- (a) the offence under paragraph 1 or 2 is committed as a member of an organised group;
- (b) the offence concerns an asset derived from a particularly serious felony;
- (c) the offence concerns an asset of substantial value;
- (d) the offender derives substantial benefit for themselves or another person; or
- (e) the offender breaches a significant duty arising from their employment, profession, position, or legal obligation.

(5) An offender shall be liable to three to ten years' imprisonment or a forfeiture of things or other valuables if:

- (a) the offence under paragraph 1 or 2 is committed in connection with an organised group operating in multiple states;
- (b) the offence concerns an asset of extensive value; or
- (c) the offender derives extensive benefit for themselves or another person.

Section 216a Special Provision on Sentencing³⁸⁵

When determining the type and extent of the penalty for money laundering under s. 216(1) and (2), the court shall also take into account the penalty applicable to the predicate offence from which the proceeds of crime originate, provided that the penalty for that predicate offence is lower under Czech law.

5

³⁸⁴ (3) Odnětím svobody na jeden rok až šest let nebo peněžitým trestem bude pachatel potrestán,

- a) spáchá-li čin uvedený v odstavci 1 nebo 2 ve vztahu k věci pocházející ze zločinu,
- b) spáchá-li takový čin ve vztahu k věci, která má větší hodnotu, nebo
- c) získá-li takovým činem pro sebe nebo pro jiného větší prospěch.

(4) Odnětím svobody na dvě léta až osm let nebo propadnutím majetku bude pachatel potrestán,

- a) spáchá-li čin uvedený v odstavci 1 nebo 2 jako člen organizované skupiny,
- b) spáchá-li takový čin ve vztahu k věci pocházející ze zvlášť závažného zločinu,
- c) spáchá-li takový čin ve vztahu k věci, která má značnou hodnotu,
- d) získá-li takovým činem pro sebe nebo pro jiného značný prospěch, nebo

- e) spáchá-li takový čin proto, že porušil důležitou povinnost vyplývající z jeho zaměstnání, povolání, postavení nebo funkce nebo uloženou mu podle zákona.

(5) Odnětím svobody na tři léta až deset let nebo propadnutím majetku bude pachatel potrestán,

- a) spáchá-li čin uvedený v odstavci 1 nebo 2 ve spojení s organizovanou skupinou působící ve více státech,
- b) spáchá-li takový čin ve vztahu k věci, která má hodnotu velkého rozsahu, nebo
- c) získá-li takovým činem pro sebe nebo pro jiného prospěch velkého rozsahu.

³⁸⁵ § 216a Zvláštní ustanovení o trestání

Při stanovení druhu trestu a jeho výměry za trestný čin legalizace výnosů z trestné činnosti podle § 216 odst. 1 a 2 soud přihlédne také k výši trestní sazby stanovené na trestný čin, ze kterého pochází výnos z trestné činnosti, pokud trestní zákon na tento trestný čin stanoví trest mírnější.

6 Section 217 Negligent Money Laundering³⁸⁶

(1) Any person who, through negligence, enables another person to disguise or conceal the origin of an asset of greater value obtained as proceeds of crime committed in the Czech Republic or abroad shall be liable to up to one year's imprisonment, a prohibition of activities, or a forfeiture of things or other valuables.

(2) The same penalty shall apply to any person who, through negligence, conceals, transfers, stores, or uses an asset of greater value obtained as proceeds of crime committed in the Czech Republic or abroad by another person.

(3) An offender shall be liable to up to three years' imprisonment if they commit an offence:

(a) under paragraph 1 or 2 by breaching a significant duty arising from their employment, profession, position, or legal obligation;

(b) in relation to an asset derived from a felony;

(c) in relation to an asset of substantial value; or

(d) obtains for themselves or another a substantial benefit.

(4) An offender shall be liable to one to five years' imprisonment if they commit an offence:

(a) under paragraph 1 or 2 in relation to an asset derived from a particularly serious felony;

(b) in relation to an asset of extensive value; or

(c) obtains for themselves or another a large-scale benefit.

7 Section 217a General Provision

For the purposes of ss. 216 and 217, an offence committed abroad shall be considered an offence under Czech law, irrespective of whether it is also punishable under the law of the foreign state where it was committed.³⁸⁷

³⁸⁶ **§ 217 Legalizace výnosů z trestné činnosti z nedbalosti**

(1) Kdo jinému z nedbalosti umožní zastřít původ nebo zjištění původu věci větší hodnoty, která je výnosem z trestné činnosti spáchané na území České republiky nebo v cizině, bude potrestán odnětím svobody až na jeden rok, zákazem činnosti nebo propadnutím věci.

(2) Stejně bude potrestán, kdo z nedbalosti ukryje, na sebe nebo na jiného převede, přechovává nebo užívá věc větší hodnoty, která je výnosem z trestné činnosti spáchané na území České republiky nebo v cizině jinou osobou.

(3) Odnětím svobody až na tři léta bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 nebo 2 proto, že porušil důležitou povinnost vyplývající z jeho zaměstnání, povolání, postavení nebo funkce nebo uloženou mu podle zákona,

b) spáchá-li takový čin ve vztahu k věci pocházející ze zločinu,

c) spáchá-li takový čin ve vztahu k věci, která má značnou hodnotu, nebo

d) získá-li takovým činem pro sebe nebo pro jiného značný prospěch.

(4) Odnětím svobody na jeden rok až pět let bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 nebo 2 ve vztahu k věci pocházející ze zvlášť závažného zločinu,

b) spáchá-li takový čin ve vztahu k věci, která má hodnotu velkého rozsahu, nebo

c) získá-li takovým činem pro sebe nebo pro jiného prospěch velkého rozsahu.

³⁸⁷ **§ 217a Společné ustanovení**

Section 220 Breach of Duty of Trust³⁸⁸

8

(1) Any person who, in violation of a statutory or contractually assumed duty to administer or manage another's property, causes minor damage to another person shall be liable to a penalty of up to two years' imprisonment or a prohibition of activities.

(2) An offender shall be liable to six months to five years' imprisonment or a monetary penalty if:

(a) the offence under paragraph 1 is committed by a person with a special duty to protect the interests of the injured party; or

(b) the offence causes substantial damage.

(3) An offender shall be liable to two to eight years' imprisonment if the offence under paragraph 1 causes extensive damage.

Section 221 Negligent Breach of Duty of Trust³⁸⁹

9

(1) Any person who, through gross negligence, breaches a statutory or contractually assumed significant duty to administer or manage another's property, thereby causing substantial damage to another, shall be liable to up to six months' imprisonment or a prohibition of activities.

(2)³⁹⁰ An offender shall be liable to up to three years' imprisonment if:

(a) the offence under paragraph 1 is committed by a person with a special duty to protect the interests of the injured party; or

(b) the offence causes extensive damage.

Za trestnou činnost spáchanou v cizině se pro účely § 216 a 217 považuje čin spáchaný v cizině, který naplňuje znaky trestného činu podle zákona České republiky, bez ohledu na to, zda je trestný i podle zákona státu, na jehož území byl spáchán.

³⁸⁸ § 220 Porušení povinnosti při správě cizího majetku

(1) Kdo poruší podle zákona mu uloženou nebo smluvně převzatou povinnost opatrovat nebo spravovat cizí majetek, a tím jinému způsobí škodu nikoli malou, bude potrestán odnětím svobody až na dvě léta nebo zákazem činnosti.

(2) Odnětím svobody na šest měsíců až pět let nebo peněžitým trestem bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 jako osoba, která má zvlášť uloženou povinnost hájit zájmy poškozeného, nebo

b) způsobí-li takovým činem značnou škodu.

(3) Odnětím svobody na dvě léta až osm let bude pachatel potrestán, způsobí-li činem uvedeným v odstavci 1 škodu velkého rozsahu.

³⁸⁹ § 221 Porušení povinnosti při správě cizího majetku z nedbalosti

(1) Kdo z hrubé nedbalosti poruší podle zákona mu uloženou nebo smluvně převzatou důležitou povinnost při opatrování nebo správě cizího majetku, a tím jinému způsobí značnou škodu, bude potrestán odnětím svobody až na šest měsíců nebo zákazem činnosti.

³⁹⁰ (2) Odnětím svobody až na tři léta bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 jako osoba, která má zvlášť uloženou povinnost hájit zájmy poškozeného, nebo

b) způsobí-li takovým činem škodu velkého rozsahu.

10 Section 240 Evasion of Taxes, Fees and Similar Mandatory Dues³⁹¹

(1) Any person who, on a greater scale, evades tax, customs duty, social security contributions, employment policy contributions, accident insurance, health insurance, fees, or any other similar mandatory payment, or unlawfully obtains benefits related to such payments, shall be liable to six months to three years' imprisonment or a prohibition of activities.

(2) An offender shall be liable to two to eight years' imprisonment if:

(a) the offence under paragraph 1 is committed with at least two other persons acting together;

(b) the offender breaches an official seal to facilitate the offence; or

(c) the offence is committed on a substantial scale.

(3) An offender shall be liable to five to ten years' imprisonment if:

(a) the offence under paragraph 1 is committed on an extensive scale; or

(b) the offence under paragraph 2(c) is committed in connection with an organised group operating in multiple states.

(4) Preparation of this offence shall be punishable.

11 Section 248 Breach of Competition Law³⁹²

(1) Any person who, in violation of competition law, engages in unfair competition by:

(a) misleading advertising;

(b)³⁹³ misleading labelling of goods or services;

³⁹¹ **§ 240 Zkrácení daně, poplatku a podobné povinné platby**

(1) Kdo ve větším rozsahu zkrátí daň, clo, pojistné na sociální zabezpečení, příspěvek na státní politiku zaměstnanosti, pojistné na úrazové pojištění, pojistné na zdravotní pojištění, poplatek nebo jinou podobnou povinnou platbu anebo vyláká výhodu na některé z těchto povinných plateb, bude potrestán odnětím svobody na šest měsíců až tři léta nebo zákazem činnosti.

(2) Odnětím svobody na dvě léta až osm let bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 nejméně se dvěma osobami,

b) poruší-li k usnadnění takového činu úřední uzávěru, nebo

c) spáchá-li takový čin ve značném rozsahu.

(3) Odnětím svobody na pět až deset let bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 ve velkém rozsahu, nebo

b) spáchá-li čin uvedený v odstavci 2 písm. c) ve spojení s organizovanou skupinou působící ve více státech.

(4) Příprava je trestná.

³⁹² **§ 248 Porušení předpisů o pravidlech hospodářské soutěže**

(1) Kdo poruší jiný právní předpis o nekalé soutěži tím, že se při účasti v hospodářské soutěži dopustí

a) klamavé reklamy,

³⁹³ b) klamavého označování zboží a služeb,

c) vyvolávání nebezpečí záměny,

d) parazitování na pověsti podniku, výrobků či služeb jiného soutěžitele,

e) podplácení,

f) zlehčování,

g) srovnávací reklamy,

h) porušování obchodního tajemství, nebo

i) ohrožování zdraví spotřebitelů a životního prostředí,

(c) creating a risk of confusion;
 (d) exploiting the reputation of a competitor's business, products, or services;
 (e) bribery;
 (f) denigration;
 (g) comparative advertising;
 (h) breach of trade secrets; or
 (i) endangering consumer health or the environment;
 and in doing so causes greater harm to competitors or consumers, or gains themselves or for another unlawful benefits on a greater scale, shall be liable to up to three years' imprisonment, a prohibition of activities, or a forfeiture of things or other valuables.

(2) The same penalty shall be imposed on
 anyone who, in violation of another legal regulation on the protection of competition, enters into an agreement with a competitor on price-fixing, market allocation, or any other agreement that disrupts economic competition;
 anyone who, in violation of another legal regulation on public procurement, seriously breaches binding rules of the procurement procedure; or
 anyone who, in violation of another legal regulation governing the activities of persons authorised to conduct business in the financial market, the activities of banks and other legal persons authorised to carry out financial activities, the trading of investment instruments, pension schemes, insurance, the management and administration of investment funds or foreign investment funds, seriously breaches binding rules on prudent business conduct, asset management, professional diligence, or the prohibition of performing actions, services, or other activities designated by law or an official decision;
 and thereby causes greater harm to other competitors or consumers, the contracting authority or another supplier, or obtains greater unjustified advantages for themselves or another person.

a způsobí tím ve větším rozsahu újmu jiným soutěžitelům nebo spotřebitelům nebo opatří tím sobě nebo jinému ve větším rozsahu neoprávněné výhody, bude potrestán odnětím svobody až na tři léta, zákazem činnosti nebo propadnutím věci.

(2) Stejně bude potrestán,

kdo v rozporu s jiným právním předpisem na ochranu hospodářské soutěže se svým konkurentem uzavře dohodu o určení ceny, dohodu o rozdělení trhu nebo jinou dohodu narušující hospodářskou soutěž,

kdo v rozporu s jiným právním předpisem o veřejných zakázkách poruší závažným způsobem závazná pravidla zadávacího řízení, nebo

kdo v rozporu s jiným právním předpisem upravujícím činnost osob oprávněných k podnikání na finančním trhu, činnost bank a jiných právnických osob oprávněných k provozování finanční činnosti, obchodování s investičními nástroji, penzijního připojištění a pojišťovnictví, obhospodařování a administraci investičních fondů nebo zahraničních investičních fondů, poruší závažným způsobem závazná pravidla obezřetného podnikání, obhospodařování majetku, odborné péče nebo zákaz vykonávat zákonem nebo úředním rozhodnutím určené úkony, služby nebo jiné činnosti,

a způsobí tím ve větším rozsahu újmu jiným soutěžitelům nebo spotřebitelům, zadavateli nebo jinému dodavateli nebo opatří tím sobě nebo jinému ve větším rozsahu neoprávněné výhody.

(3)³⁹⁴ An offender shall be liable to six months to five years' imprisonment, a monetary penalty, or a forfeiture of things or other valuables if:

- (a) the offence under paragraph 1 or 2 is committed as a member of an organised group;
- (b) the offence is committed repeatedly;
- (c) the offence causes substantial damage; or
- (d) the offender derives substantial benefit for themselves or another person.

(4) An offender shall be liable to two to eight years' imprisonment if:

- (a) the offence under paragraph 1 or 2 causes extensive damage;
- (b) the offender derives extensive benefit for themselves or another person; or
- (c) the offence results in the bankruptcy of another person.

12 **Section 248a Special Provision on Effective Remorse**³⁹⁵

Criminal liability for the offence of breach of competition law under s. 248(2), first paragraph, shall not occur if the offender fulfils the conditions laid down by other competition law provisions allowing for exemption from or reduction of a fine for participating in price-fixing agreements, market allocation agreements, or other anti-competitive agreements with competitors.

13 **Section 256 Arranging an Advantage in Public Procurement, Public Tenders and Government Auctions**

(1)³⁹⁶ Any person who, in connection with public procurement, a public tender, or a public auction, with the intent to cause damage to another or to obtain an advantage for

³⁹⁴ (3) Odnětím svobody na šest měsíců až pět let, peněžitým trestem nebo propadnutím věci bude pachatel potrestán,

- a) spáchá-li čin uvedený v odstavci 1 nebo 2 jako člen organizované skupiny,
 - b) spáchá-li takový čin opětovně,
 - c) způsobí-li takovým činem značnou škodu, nebo
 - d) získá-li takovým činem pro sebe nebo pro jiného značný prospěch.
- (4) Odnětím svobody na dvě léta až osm let bude pachatel potrestán,
- a) způsobí-li činem uvedeným v odstavci 1 nebo 2 škodu velkého rozsahu,
 - b) získá-li takovým činem pro sebe nebo pro jiného prospěch velkého rozsahu, nebo
 - c) způsobí-li takovým činem jinému úpadek.

³⁹⁵ **§ 248a Zvláštní ustanovení o účinné lítosti**

Trestní odpovědnost za trestný čin porušení předpisů o pravidlech hospodářské soutěže podle § 248 odst. 2 alinea první zaniká, jestliže pachatel splní podmínky podle jiného právního předpisu na ochranu hospodářské soutěže pro upuštění od uložení pokuty nebo pro snížení pokuty za účast na dohodě o určení ceny, dohodě o rozdělení trhu nebo jiné dohodě narušující hospodářskou soutěž se svým konkurentem.

³⁹⁶ **§ 256 Zjednání výhody při zadání veřejné zakázky, při veřejné soutěži a veřejné dražbě**

(1) Kdo v souvislosti se zadáním veřejné zakázky, s veřejnou soutěží nebo veřejnou dražbou v úmyslu způsobit jinému škodu nebo opatřit sobě nebo jinému prospěch zjedná některému dodavateli, soutěžiteli nebo účastníkovi dražby přednost nebo výhodnější podmínky na úkor jiných dodavatelů nebo soutěžitelů, bude potrestán odnětím svobody na šest měsíců až tři léta nebo zákazem činnosti.

(2) Odnětím svobody na dvě léta až osm let bude pachatel potrestán, jestliže

- a) spáchá čin uvedený v odstavci 1 jako člen hodnotící komise, vyhlášovatel nebo pořadatel veřejné soutěže nebo veřejné dražby, licitátor nebo jako člen organizované skupiny,

themselves or another, grants preferential treatment or more favourable conditions to a supplier, bidder, or auction participant at the expense of other suppliers or competitors shall be liable to six months to three years' imprisonment or a prohibition of activities.

(2) An offender shall be liable to two to eight years' imprisonment if:

(a) the offence under paragraph 1 is committed as a member of an evaluation committee, organiser, or announcer of a public tender or auction, an auctioneer, or as a member of an organised group;

(b) the offence causes substantial damage; or

(c) the offender derives substantial benefit for themselves or another person.

(3) The same penalty as in paragraph 2 shall apply to any person who, under the circumstances described in paragraph 1, requests, accepts, or solicits property or other benefits.

(4) An offender shall be liable to three to ten years' imprisonment if they request, accept, or solicit property or other benefits under the circumstances described in paragraph 1 and commit such an offence as a public official.

Section 257 Scheming to Defraud in Public Procurement and Tenders³⁹⁷

14

(1) Any person who engages in fraudulent practices in connection with public procurement or a public tender by:

(a) using deceit or threats of violence or other severe harm to prevent another from participating in a procurement process or tender;

(b) offering, promising, or providing property or other benefits to induce another to refrain from participating in a procurement process or tender;

b) způsobí takovým činem značnou škodu, nebo

c) získá-li takovým činem pro sebe nebo pro jiného značný prospěch.

(3) Stejně jako v odstavci 2 bude potrestán, kdo za okolností uvedených v odstavci 1 žádá, přijme nebo si dá slíbit majetkový nebo jiný prospěch.

(4) Kdo za okolností uvedených v odstavci 1 žádá, přijme nebo si dá slíbit majetkový nebo jiný prospěch a spáchá takový čin jako úřední osoba, bude potrestán odnětím svobody na tři léta až deset let.

³⁹⁷ § 257 Pletichy při zadání veřejné zakázky a při veřejné soutěži

(1) Kdo se dopustí pletich v souvislosti se zadáním veřejné zakázky nebo s veřejnou soutěží tím, že

a) lstí nebo pohrůzkou násilí nebo jiné těžké újmy přiměje jiného, aby se zdržel účasti v zadávacím řízení nebo ve veřejné soutěži,

b) jinému poskytne, nabídne nebo slíbí majetkový nebo jiný prospěch za to, že se zdrží účasti v zadávacím řízení nebo ve veřejné soutěži,

c) žádá nebo přijme majetkový nebo jiný prospěch za to, že se zdrží účasti v zadávacím řízení nebo ve veřejné soutěži, nebo

d) na základě dohody s jiným zájemcem nebo uchazečem vyvíjí činnost směřující k zadání veřejné zakázky za nepřiměřeně vysokou nebo jinak nevýhodnou cenu, bude potrestán odnětím svobody až na tři léta nebo zákazem činnosti.

(2) Odnětím svobody na dvě léta až osm let bude pachatel potrestán, spáchá-li čin uvedený v odstavci 1

a) v úmyslu opatřit sobě nebo jinému značný prospěch, nebo

b) jako úřední osoba.

(3) Odnětím svobody na tři léta až deset let bude pachatel potrestán, spáchá-li čin uvedený v odstavci 1

a) v úmyslu opatřit sobě nebo jinému prospěch velkého rozsahu, nebo

b) jako úřední osoba v úmyslu opatřit sobě nebo jinému značný prospěch.

(c) soliciting or accepting property or other benefits as an inducement to refrain from participating in a procurement process or tender;

or (d) engaging in collusion with another bidder to secure a public contract at an excessively high or otherwise disadvantageous price

shall be liable to up to three years' imprisonment or a prohibition of activities.

(2) An offender shall be liable to two to eight years' imprisonment if they commit an offence under paragraph 1:

(a) with the intent to obtain substantial benefit for themselves or another person; or

(b) as a public official.

(3) An offender shall be liable to three to ten years' imprisonment if they commit an offence under paragraph 1:

(a) with the intent to obtain extensive benefit for themselves or another person; or

(b) as a public official, with the intent to obtain substantial benefit for themselves or another person.

15 Section 260 Damaging the Financial Interests of the European Union³⁹⁸

(1) Whoever drafts, uses, or presents false, incorrect, or incomplete documents; provides false or grossly distorted information; or conceals documents or material information, thereby enabling the unauthorised use or withholding of funds from the European Union budget or budgets managed by the European Union or on behalf of the European Union, or reducing the resources of any such budget, or enabling the unauthorised use or retention of assets obtained from the European Union budget or budgets administered by or on behalf of the European Union, shall be punishable by up to three years' imprisonment, a prohibition of activities or a forfeiture of things or other valuables.

(2) Anyone who misappropriates funds from the European Union budget or budgets managed by or on behalf of the European Union, assets obtained from the European

³⁹⁸ § 260 Poškození finančních zájmů Evropské unie

(1) Kdo vyhotoví, použije nebo předloží nepravdivé, nesprávné nebo neúplné doklady, uvede nepravdivé, nesprávné nebo neúplné údaje anebo zatají doklady nebo údaje, a tím umožní neoprávněné použití nebo zadržování finančních prostředků pocházejících z rozpočtu Evropské unie nebo rozpočtů spravovaných Evropskou unií nebo jejím jménem anebo zmenšení zdrojů některého takového rozpočtu nebo umožní neoprávněné použití nebo zadržování majetku pořízeného z rozpočtu Evropské unie nebo rozpočtů spravovaných Evropskou unií nebo jejím jménem, bude potrestán odnětím svobody až na tři léta, zákazem činnosti nebo propadnutím věci.

(2) Stejně bude potrestán, kdo neoprávněně použije finanční prostředky pocházející z rozpočtu Evropské unie nebo rozpočtů spravovaných Evropskou unií nebo jejím jménem, majetek pořízený z rozpočtu Evropské unie nebo rozpočtů spravovaných Evropskou unií nebo jejím jménem anebo zmenší zdroje některého takového rozpočtu.

(3) Odnětím svobody na jeden rok až pět let nebo peněžitým trestem bude pachatel potrestán, způsobí-li činem uvedeným v odstavci 1 nebo 2 větší škodu.

(4) Odnětím svobody na dvě léta až osm let bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 nebo 2 jako člen organizované skupiny,

b) spáchá-li takový čin jako osoba, která má zvlášť uloženou povinnost hájit zájmy Evropské unie, nebo

c) způsobí-li takovým činem značnou škodu.

(5) Odnětím svobody na pět až deset let bude pachatel potrestán, způsobí-li činem uvedeným v odstavci 1 nebo 2 škodu velkého rozsahu.

Union budget or budgets managed by or on behalf of the European Union, or reduces the resources of any such budget, shall be punished equally.

(3) The offender shall be punished by imprisonment for a term of one to five years or by a monetary penalty if the act described in paragraph 1 or 2 results in greater damage.

(4) The offender shall be punished by imprisonment for two to eight years, if

(a) the act described in paragraphs 1 or 2 is committed by a member of an organised group;

(b) the offender acts as a person with a special obligation to defend the interests of the European Union; or

(c) the offender causes extensive damage by such an act.

(5) The offender shall be sentenced to imprisonment for five to ten years if the act described in paragraphs 1 or 2 results in damage on a large scale.

Section 329 Abuse of Official Power³⁹⁹

(1) A public official who, with the intent to cause damage to another, inflict serious harm, or obtain unlawful benefit for themselves or another:

(a) exercises their powers contrary to special statutes;

(b) exceeds their authority; or

(c) fails to fulfil the duties arising from their office;

shall be liable to one to five years' imprisonment or a prohibition of activities.

(2) An offender shall be liable to three to ten years' imprisonment if:

(a) they derive substantial benefit for themselves or another person;

16

³⁹⁹ § 329 Zneužití pravomoci úřední osoby

(1) Úřední osoba, která v úmyslu způsobit jinému škodu nebo jinou závažnou újmu anebo opatřit sobě nebo jinému neoprávněný prospěch

a) vykonává svou pravomoc způsobem odporujícím jinému právnímu předpisu,

b) překročí svou pravomoc, nebo

c) nesplní povinnost vyplývající z její pravomoci,

bude potrestána odnětím svobody na jeden rok až pět let nebo zákazem činnosti.

(2) Odnětím svobody na tři léta až deset let bude pachatel potrestán,

a) opatří-li činem uvedeným v odstavci 1 sobě nebo jinému značný prospěch,

b) spáchá-li takový čin na jiném pro jeho skutečnou nebo domnělou rasu, příslušnost k etnické skupině, národnost, politické přesvědčení, vyznání nebo proto, že je skutečně nebo domněle bez vyznání,

c) způsobí-li takovým činem vážnou poruchu v činnosti orgánu státní správy, územní samosprávy, soudu nebo jiného orgánu veřejné moci,

d) způsobí-li takovým činem vážnou poruchu v činnosti právnické nebo fyzické osoby, která je podnikatelem,

e) spáchá-li takový čin zneužívaje bezbrannosti, závislosti, tísně, rozumové slabosti nebo nezkušenosti jiného,

f) způsobí-li takovým činem značnou škodu, nebo

g) spáchá-li takový čin ve spojení s cizí mocí nebo s cizím činitelem.

(3) Odnětím svobody na pět až dvanáct let nebo propadnutím majetku bude pachatel potrestán,

a) opatří-li činem uvedeným v odstavci 1 sobě nebo jinému prospěch velkého rozsahu, nebo

b) způsobí-li takovým činem škodu velkého rozsahu.

(4) Příprava je trestná.

- (b) the offence is committed against a person due to their actual or perceived race, ethnicity, nationality, political beliefs, or religion, or because they are perceived to be without religious affiliation;
 - (c) the offence causes serious disruption to the operations of a state administration body, local government, court, or other public authority;
 - (d) the offence causes serious disruption to a businessperson, either natural or legal;
 - (e) the offence is committed by exploiting another's vulnerability, dependence, distress, intellectual disability, or inexperience;
 - (f) the offence causes substantial damage.
- (3) An offender shall be liable to five to twelve years' imprisonment or a forfeiture of assets if:
- (a) they derive extensive benefit for themselves or another person; or
 - (b) the offence causes extensive damage.
- (4) Preparation of this offence shall be punishable.

17 Section 330 Negligent Obstruction of Official Business⁴⁰⁰

- (1) A public official who, through negligence, obstructs or significantly hinders the fulfilment of an important task shall be liable to up to one year's imprisonment or a prohibition of activities.
- (2) An offender shall be liable to up to three years' imprisonment or a ban on professional activity if:
- (a) the offence under paragraph 1 causes serious disruption to the operations of a state administration body, local government, court, or other public authority;
 - (b) the offence causes serious disruption to a business entity;
 - (c) the offence causes substantial damage; or
 - (d) the offence results in substantial benefit for another person.
- (3) An offender shall be liable to one to five years' imprisonment if:
- (a) the offence under paragraph 1 causes extensive damage; or
 - (b) the offence results in extensive benefit for another person.

⁴⁰⁰ § 330 Maření úkolu úřední osoby z nedbalosti

- (1) Úřední osoba, která při výkonu své pravomoci z nedbalosti zmaří nebo podstatně ztíží splnění důležitého úkolu, bude potrestána odnětím svobody až na jeden rok nebo zákazem činnosti.
- (2) Odnětím svobody až na tři léta nebo zákazem činnosti bude pachatel potrestán,
- a) způsobí-li činem uvedeným v odstavci 1 vážnou poruchu v činnosti orgánu státní správy, územní samosprávy, soudu nebo jiného orgánu veřejné moci,
 - b) způsobí-li takovým činem vážnou poruchu v činnosti právnické nebo fyzické osoby, která je podnikatelem,
 - c) způsobí-li takovým činem značnou škodu, nebo
 - d) zajistí-li takovým činem jinému značný prospěch.
- (3) Odnětím svobody na jeden rok až pět let bude pachatel potrestán,
- a) způsobí-li činem uvedeným v odstavci 1 škodu velkého rozsahu, nebo
 - b) zajistí-li takovým činem jinému prospěch velkého rozsahu.

Section 331 Accepting a Bribe⁴⁰¹

(1) Whoever, either personally or through another, in connection with handling matters of public interest, accepts or agrees to accept a bribe⁴⁰² for themselves or for another; or whoever, either personally or through another, in connection with their own or another's business activities, accepts or agrees to accept a bribe for themselves or for another; shall be punished by imprisonment of up to four years or by a prohibition of activities.

(2) Whoever, under the circumstances specified in paragraph 1, demands a bribe shall be punished by imprisonment for six months to five years.

(3) The offender shall be punished by imprisonment for three to ten years or by a forfeiture of assets if:

(a) they commit the act specified in paragraph 1 or 2 with the intent to obtain substantial benefit for themselves or another; or

(b) they commit such an act as a public official.

(4) The offender shall be punished by imprisonment for five to twelve years if:

(a) they commit the act specified in paragraph 1 or 2 with the intent to obtain extensive benefit for themselves or another; or

(b) they commit such an act as a public official with the intent to obtain substantial benefit for themselves or another.

Section 332 Bribery

(1)⁴⁰³ Whoever, either personally or through another, provides, offers, or promises a bribe to another person or for another in connection with handling matters of public interest; or

⁴⁰¹ **§ 331 Přijetí úplatku**

(1) Kdo sám nebo prostřednictvím jiného v souvislosti s obstaráváním věcí obecného zájmu pro sebe nebo pro jiného přijme nebo si dá slíbit úplatek, nebo kdo sám nebo prostřednictvím jiného v souvislosti s podnikáním svým nebo jiného pro sebe nebo pro jiného přijme nebo si dá slíbit úplatek,

bude potrestán odnětím svobody až na čtyři léta nebo zákazem činnosti.

(2) Kdo za okolností uvedených v odstavci 1 úplatek žádá, bude potrestán odnětím svobody na šest měsíců až pět let.

(3) Odnětím svobody na tři léta až deset let nebo propadnutím majetku bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 nebo 2 v úmyslu opatřit sobě nebo jinému značný prospěch, nebo

b) spáchá-li takový čin jako úřední osoba.

(4) Odnětím svobody na pět až dvanáct let bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 nebo 2 v úmyslu opatřit sobě nebo jinému prospěch velkého rozsahu, nebo

b) spáchá-li takový čin jako úřední osoba v úmyslu opatřit sobě nebo jinému značný prospěch.

⁴⁰² With regard to bribery cases, it should further be noted that Czech law does not provide a single statutory definition. The term must be interpreted in accordance with international recommendations, such as those of the OECD, and within a broader legal and contextual framework. For discussion of its relation to the term kickback, see Logesová, Ottová and Pumr 2023, pp. 301–305.

⁴⁰³ **§ 332 Podplacení**

(1) Kdo sám nebo prostřednictvím jiného poskytne, nabídne nebo slíbí úplatek jinému nebo pro jiného v souvislosti s obstaráváním věcí obecného zájmu, nebo

whoever, either personally or through another, provides, offers, or promises a bribe to another person or for another in connection with their own or another's business activities;

shall be punished by imprisonment of up to two years or by a monetary penalty.

(2) The offender shall be punished by imprisonment for one to six years, a forfeiture of assets, or a monetary penalty if:

(a) they commit the act specified in paragraph 1 with the intent to obtain substantial benefit for themselves or another, cause substantial damage to another, or cause another particularly serious consequence; or

(b) they commit such an act against a public official.

20 Section 333 Trading in Influence⁴⁰⁴

(1) Whoever, either personally or through another, demands, agrees to accept, or accepts a bribe for exerting, either personally or through another, their influence on the exercise of authority by a public official, or for having already done so shall be punished by imprisonment of up to three years.

(2) Whoever, either personally or through another, for the reason specified in paragraph 1, provides, offers, or promises a bribe to another shall be punished by imprisonment of up to two years.

21 Section 334 General Provisions

(1)⁴⁰⁵ A bribe is understood as an unlawful advantage consisting of direct financial enrichment or other benefits received or to be received by the bribed person or another person with their consent, to which they are not entitled.

kdo sám nebo prostřednictvím jiného poskytne, nabídne nebo slíbí úplatek jinému nebo pro jiného v souvislosti s podnikáním svým nebo jiného, bude potrestán odnětím svobody až na dvě léta nebo peněžitým trestem.

(2) Odnětím svobody na jeden rok až šest let, propadnutím majetku nebo peněžitým trestem bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 v úmyslu opatřit sobě nebo jinému značný prospěch nebo způsobit jinému značnou škodu anebo jiný zvlášť závažný následek, nebo

b) spáchá-li takový čin vůči úřední osobě.

⁴⁰⁴ § 333 Nepřímé úplatkářství

(1) Kdo sám nebo prostřednictvím jiného žádá, dá si slíbit nebo přijme úplatek za to, že bude svým vlivem nebo prostřednictvím jiného působit na výkon pravomoci úřední osoby, nebo za to, že tak již učinil, bude potrestán odnětím svobody až na tři léta.

(2) Kdo sám nebo prostřednictvím jiného z důvodu uvedeného v odstavci 1 jinému poskytne, nabídne nebo slíbí úplatek, bude potrestán odnětím svobody až na dvě léta.

⁴⁰⁵ § 334 Společné ustanovení

(1) Úplatkem se rozumí neoprávněná výhoda spočívající v přímém majetkovém obohacení nebo jiném zvýhodnění, které se dostává nebo má dostat uplácené osobě nebo s jejím souhlasem jiné osobě, a na kterou není nárok.

(2) Úřední osobou podle § 331 až 333 se vedle osoby uvedené v § 127 rozumí též jakákoliv osoba

a) zastávající funkci v zákonodárném orgánu, soudním orgánu nebo v jiném orgánu veřejné moci cizího státu,

b) zastávající funkci nebo zaměstnaná nebo pracující v mezinárodním soudním orgánu,

(2) A public official under ss. 331 to 333, in addition to those defined in s. 127, also includes any person:

(a) holding a position in the legislative, judicial, or other public authority body of a foreign state;

(b) holding a position, employed, or working in an international judicial body;

(c) holding a position, employed, or working in an international or supranational organisation established by states or other subjects of public international law, or their body or institution, or acting on behalf of such an organisation; or

(d) holding a position in a legal person engaged in business in which the Czech Republic or a foreign state has a controlling influence;

if the exercise of such a function, employment, or work is associated with the power to handle matters of public interest and the criminal offence was committed in connection with this authority.

(3) Handling matters of public interest is also understood to include compliance with a legally imposed or contractually assumed obligation aimed at ensuring that participants in commercial relations or persons acting on their behalf are not harmed or unduly advantaged.

Section 348 Forging and Altering a Public Document

22

(1)⁴⁰⁶ Whoever forges a public document or substantially alters its content with the intent that it be used as genuine, or whoever uses such a document as genuine;

c) zastávající funkci nebo zaměstnaná nebo pracující v mezinárodní nebo nadnárodní organizaci vytvořené státy nebo jinými subjekty mezinárodního práva veřejného nebo v jejím orgánu nebo instituci anebo jednající jménem takové organizace, nebo

d) zastávající funkci v podnikající právnické osobě, v níž má rozhodující vliv Česká republika nebo cizí stát, pokud je s výkonem takové funkce, zaměstnání nebo práce spojena pravomoc při obstarávání věcí obecného zájmu a trestný čin byl spáchán v souvislosti s touto pravomocí.

(3) Za obstarávání věcí obecného zájmu se považuje též zachovávání povinnosti uložené právním předpisem nebo smluvně převzaté, jejímž účelem je zajistit, aby v obchodních vztazích nedocházelo k poškozování nebo bezdůvodnému zvýhodňování účastníků těchto vztahů nebo osob, které jejich jménem jednají.

⁴⁰⁶ § 348 Padělání a pozměnění veřejné listiny

(1) Kdo padělá veřejnou listinu nebo podstatně změni její obsah v úmyslu, aby jí bylo užito jako pravé, nebo takovou listinu užije jako pravou,

kdo takovou listinu opatří sobě nebo jinému nebo ji přechovává v úmyslu, aby jí bylo užito jako pravé, nebo kdo vyrobí, nabízí, prodá, zprostředkuje nebo jinak zpřístupní, sobě nebo jinému opatří nebo přechovává nástroj, zařízení nebo jeho součást, postup, pomůcku nebo jakýkoli jiný prostředek, včetně počítačového programu, vytvořený nebo přizpůsobený k padělání nebo pozměnění veřejné listiny, bude potrestán odnětím svobody až na tři léta nebo zákazem činnosti.

(2) Odnětím svobody na jeden rok až šest let bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 jako člen organizované skupiny,

b) způsobí-li takovým činem značnou škodu, nebo

c) získá-li takovým činem pro sebe nebo pro jiného značný prospěch.

(3) Odnětím svobody na tři léta až deset let bude pachatel potrestán,

a) spáchá-li čin uvedený v odstavci 1 jako člen organizované skupiny působící ve více státech,

whoever obtains or holds such a document for themselves or another with the intent that it be used as genuine; or

whoever produces, offers, sells, mediates, or otherwise provides, obtains for themselves or another, or holds a tool, device, or its component, method, aid, or any other means, including computer programmes, created or adapted for forging or altering public documents;

shall be punished by imprisonment of up to three years or a prohibition of activities.

(2) The offender shall be punished by imprisonment for one to six years if:

(a) they commit the act specified in paragraph 1 as a member of an organised group;

(b) they cause substantial damage by such an act; or

(c) they obtain substantial benefit for themselves or another by such an act.

(3) The offender shall be punished by imprisonment for three to ten years if:

(a) they commit the act specified in paragraph 1 as a member of an organised group operating in multiple states;

(b) they commit such an act with the intent to facilitate or support the commission of a terrorist offence, participation in a terrorist group (s. 312a), financing of terrorism (s. 312d), support and promotion of terrorism under s. 312e(3), or threatening with a terrorist offence (s. 312f);

(c) they cause extensive damage by such an act; or

(d) they obtain extensive benefit for themselves or another by such an act.

23 Section 361 Participation in an Organised Crime Group⁴⁰⁷

(1) Whoever establishes an organised criminal group;

whoever participates in the activities of an organised criminal group; or

whoever supports an organised criminal group;

shall be punished by imprisonment for two to ten years or by a forfeiture of assets.

(2) The offender shall be punished by imprisonment for three to twelve years or by a forfeiture of assets if they commit the act specified in paragraph 1 as a leader or representative of an organised criminal group.

b) spáchá-li takový čin v úmyslu umožnit nebo usnadnit spáchání teroristického trestného činu, trestného činu účasti na teroristické skupině (§ 312a), financování terorismu (§ 312d), podpory a propagace terorismu podle § 312e odst. 3 nebo vyhrožování teroristickým trestným činem (§ 312f),

c) způsobí-li takovým činem škodu velkého rozsahu, nebo

d) získá-li takovým činem pro sebe nebo pro jiného prospěch velkého rozsahu.

⁴⁰⁷ § 361 Účast na organizované zločinecké skupině

(1) Kdo založí organizovanou zločineckou skupinu,

kdo se činnosti organizované zločinecké skupiny účastní, nebo

kdo organizovanou zločineckou skupinu podporuje,

bude potrestán odnětím svobody na dvě léta až deset let nebo propadnutím majetku.

(2) Odnětím svobody na tři léta až dvanáct let nebo propadnutím majetku bude pachatel potrestán, spáchá-li čin uvedený v odstavci 1 jako vedoucí činitel nebo představitel organizované zločinecké skupiny.

(3) Ustanovení § 107 a 108 se na pachatele činu uvedeného v odstavcích 1 a 2 neuplatní.

(3) The provisions of ss. 107 and 108 shall not apply to the offender of the act specified in paragraphs 1 and 2.

3. Annex III: Seizure Measures

Further, we include the relevant statutory provisions on the seizure of items due to their considerable practical significance, particularly in proceedings involving PIF-related offences, where issues of evidentiary as well as other forms of seizure frequently arise. These should be read with reference to commentary provided above under Art 30(1) EPPO Regulation, Chapter 1.2.3.

1 Section 79a Seizing Instruments of a Crime, Proceeds of a Crime and a Replacement Value⁴⁰⁸

(1) If established facts indicate that a specific item is an instrument or proceeds of criminal activity, the presiding judge or, in pre-trial proceedings, the public prosecutor or law enforcement agency may decide to seize the item. The law enforcement agency must obtain prior consent from the public prosecutor before issuing such a decision. However, in urgent cases where delay is not possible, prior consent is not required. In such cases, the law enforcement agency must submit its decision to the public prosecutor within 48 hours, who must either approve or revoke the decision. A complaint may be lodged against the decision to seize the item.

(2) The decision to seize property or accompanying documents must adequately and unambiguously specify the objects subject to seizure. If a right is being seized, it may also include rights that will arise in the future. The decision shall prohibit the person from whom the object was seized from transferring it to another party or encumbering it after the notification of the decision. If a tangible object is seized, the person is also

⁴⁰⁸ § 79a Zajištění nástrojů trestné činnosti a výnosů z trestné činnosti

(1) Nasvědčují-li zjištěné skutečnosti tomu, že určitá věc je nástrojem trestné činnosti nebo výnosem z trestné činnosti, může předseda senátu a v přípravném řízení státní zástupce nebo policejní orgán rozhodnout o zajištění takové věci. Policejní orgán k takovému rozhodnutí potřebuje předchozí souhlas státního zástupce. Předchozího souhlasu státního zástupce není třeba v naléhavých případech, které nesnesou odkladu. Policejní orgán je v takovém případě povinen do 48 hodin své rozhodnutí předložit státnímu zástupci, který s ním buď vysloví souhlas, nebo je zruší. Proti rozhodnutí o zajištění je přípustná stížnost.

(2) V rozhodnutí o zajištění nebo v připojených listinách je zapotřebí náležitě a nezaměnitelně vymezit věci podléhající zajištění. Je-li zajišťováno právo, může být zajištěno i právo teprve v budoucnu vzniklé. V rozhodnutí o zajištění se tomu, komu byla věc zajištěna, zakáže, aby po oznámení rozhodnutí takovou věc převedl na jiného nebo ji zatížil, a je-li zajištěna hmotná věc, také, aby ji záměrně poškozoval nebo ničil. Je-li to zapotřebí pro účely zajištění nebo správy zajištěné věci, lze v rozhodnutí o zajištění věci nebo i v dodatečném rozhodnutí zakázat nebo omezit také výkon dalších práv souvisejících se zajištěnou věcí, a to včetně práv teprve v budoucnu vzniklých, jakož i vyzvat k vydání všech listin nebo jiných hmotných nosičů, jejichž předložení je nutné k uplatnění určitého práva k zajištěné věci, s upozorněním na následky nevyhovění takové výzvě ve stanovené lhůtě (§ 66 a 79). Na dodatečné rozhodnutí o zákazu nebo omezení výkonu dalších práv souvisejících se zajištěnou věcí se ustanovení o rozhodnutí o zajištění použijí přiměřeně.

(3) V rozhodnutí o zajištění se tomu, komu byla věc zajištěna, dále uloží, aby orgánu činnému v trestním řízení, který rozhodl o zajištění, do 15 dnů od oznámení rozhodnutí sdělil, jaká práva třetích osob se váží k zajištěné věci, zda je jiným způsobem omezen výkon práva s ní nakládat, a bylo-li zajištěno majetkové právo, též kdo je osobou povinnou poskytnout odpovídající plnění, s upozorněním na následky nevyhovění takové výzvě ve stanovené lhůtě (§ 66).

(4) Orgán činný v trestním řízení, který rozhodl o zajištění, učiní všechny úkony nezbytné k výkonu takového rozhodnutí.

(5) Proti rozhodnutí o zajištění je přípustná stížnost.

prohibited from deliberately damaging or destroying it. If necessary for the enforcement or management of the seized object, the decision to seize property or a subsequent decision may impose further prohibitions or restrictions on the exercise of rights related to the seized object, including future rights. Additionally, the decision may require the submission of all documents or physical records necessary to assert certain rights over the seized object, with a warning regarding the consequences of failing to comply within the specified period (s. 66 and s. 79). The provisions governing the decision to seize property shall apply *mutatis mutandis* to any subsequent decision imposing additional prohibitions or restrictions.

(3) The person from whom the object was seized must, within 15 days of the notification of the decision, inform the authority conducting the criminal proceedings of any third-party rights related to the seized object, any other restrictions on its disposal, and, if a property right was seized, identify the entity obliged to provide corresponding performance. Failure to comply within the specified period shall have the consequences set out in s. 66.

(4) The authority that issued the decision to seize property shall take all necessary steps to enforce it.

(5) A complaint may be lodged against the decision to seize property.

Section 79b Delivery of the Decision on Seizure and Notification Thereof⁴⁰⁹

2

(1) The authority conducting criminal proceedings that issued the decision to seize property shall, without delay, deliver an abbreviated version of the decision without reasoning to the authority or person responsible for executing the seizure. Simultaneously, it shall instruct such authorities or persons that, should they ascertain that the seized item is being handled in a manner that could frustrate or hinder the purpose of the seizure, it must immediately notify the issuing authority. The authority or person responsible for executing the seizure must, without delay upon receiving the decision, carry out the seizure and take all necessary measures to prevent any breach of the prohibitions and

⁴⁰⁹ § 79b Doručení rozhodnutí o zajištění a vyznění o něm

(1) Orgán činný v trestním řízení, který rozhodl o zajištění, bezodkladně doručí zkrácené rozhodnutí o zajištění bez odůvodnění orgánu nebo osobě, které jsou příslušné k provedení zajištění. Současně orgány nebo osoby příslušné k provedení zajištění vyzve, aby, pokud zjistí, že se s věcí, která byla zajištěna, nakládá tak, že hrozí zmaření nebo ztížení účelu zajištění, mu tuto skutečnost neprodleně oznámily. Orgán nebo osoba příslušná k provedení zajištění je povinna neprodleně po doručení rozhodnutí o zajištění provést zajištění věci a učinit vše potřebné k tomu, aby nedošlo k porušení zákazů a omezení uvedených v rozhodnutí o zajištění věci. Poté, co tento orgán nebo osoba provedou zajištění věci, orgán činný v trestním řízení doručí rozhodnutí o zajištění osobě, které byla věc zajištěna.

(2) Byla-li zajištěna pohledávka a nejde-li o pohledávku na účtu vůči bance nebo jinému subjektu oprávněnému vést účet pro jiného, orgán činný v trestním řízení, který rozhodl o zajištění, doručí zkrácené rozhodnutí o zajištění bez odůvodnění také dlužníku vlastníka pohledávky a uloží mu, aby místo plnění vlastníku složil předmět plnění do jeho úschovy nebo na jiné určené místo. Složením předmětu plnění do úschovy nebo na určené místo dlužník svůj závazek v rozsahu poskytnutého plnění splní. Rozhodnutí o zajištění se dlužníku oznámí dříve než vlastníku zajištěné pohledávky.

restrictions set out in the decision. Once the seizure has been executed, the authority conducting criminal proceedings shall deliver the decision to seize property to the person from whom the item was seized.

(2)⁴¹⁰ If a claim has been seized and it does not concern an account receivable from a bank or another entity authorised to maintain accounts for third parties, the authority conducting criminal proceedings that issued the decision to seize property shall also deliver an abbreviated version of the decision without reasoning to the debtor of the claim's owner. The debtor shall be instructed to deposit the fulfilment of their obligation into the authority's escrow or at another designated location instead of fulfilling it directly to the owner. By depositing the fulfilment into escrow or at the designated location, the debtor shall be deemed to have discharged their obligation to the extent of the deposited fulfilment. The decision to seize property shall be notified to the debtor before the owner of the seized claim.

(3) If deemed necessary by the authority conducting criminal proceedings that issued the decision to seize property to achieve the purpose of the seizure, it shall also notify other authorities and persons beyond those specified in paragraph 1. These include entities with statutory obligations concerning the record-keeping, supervision, or other oversight of the seized item, its owner, or its holder under other legal provisions. Such authorities and persons shall also be instructed to immediately notify the issuing authority if they become aware of any handling of the seized item that could frustrate the purpose of the seizure, and they are obliged to comply with this instruction. Furthermore, notification shall be given to persons and authorities known to have a pre-emption right, tenancy right, or other legal interest in the seized item or who are conducting proceedings in which the right to dispose of such an item has been restricted. If the seizure concerns a share in a business corporation, the authority conducting criminal proceedings shall notify the corporation of this fact after the decision has become final.

(4) If the seizure concerns immovable property, the authority conducting criminal proceedings shall notify the cadastral office once the decision has become final.

⁴¹⁰ (3) Považuje-li to orgán činný v trestním řízení, který rozhodl o zajištění, za potřebné pro dosažení účelu zajištění, vyrozumí o zajištění věci také jiné orgány a osoby než uvedené v odstavci 1, které mají na základě jiných právních předpisů uloženou evidenční, dohledovou nebo jinou povinnost ve vztahu k zajištěné věci nebo jejímu vlastníku anebo držiteli, a zároveň je vyzve k tomu, aby mu, pokud zjistí, že je se zajištěnými věcmi nakládáno tak, že hrozí zmaření účelu jejich zajištění, tuto skutečnost neprodleně oznámily; tyto orgány a osoby jsou povinny takové výzvě vyhovět. Dále o zajištění vyrozumí osoby a orgány, o nichž je mu známo, že mají k zajištěné věci předkupní, nájemní nebo jiné právo, nebo vedou řízení, v němž byl omezen výkon práv s takovou věcí nakládat. Orgán činný v trestním řízení, který rozhodl o zajištění podílu v obchodní korporaci, o této skutečnosti vyrozumí po právní moci takového rozhodnutí také obchodní korporaci.

(4) Orgán činný v trestním řízení, který rozhodl o zajištění nemovité věci, vyrozumí katastrální úřad o nabytí právní moci takového rozhodnutí.

Section 79c Execution of Seizure of Movable Property⁴¹¹

(1) Any person in possession of movable property that may be subject to seizure is obliged to surrender it upon request by the presiding judge, or in pre-trial proceedings, by the public prosecutor or the law enforcement agency. If the person fails to comply, the property may be withdrawn from their possession. The procedure for surrendering and withdrawing movable property shall be governed *mutatis mutandis* by ss. 78 and 79.

(2) The authority involved in criminal proceedings, which is competent to issue a warrant for the withdrawal of property, may decide, after considering all relevant circumstances, to leave the movable property at its current location, particularly if:

(a) withdrawing the property would lead to its deterioration or the deterioration of an item functionally connected to it;

⁴¹¹ § 79c Provedení zajištění movité věci

(1) Kdo má u sebe movitou věc, která může podléhat zajištění, je povinen takovou věc na vyzvání předsedy senátu a v přípravném řízení státního zástupce nebo policejního orgánu vydat; pokud ji nevydá, může mu být odňata. Na postup při vydání a odnětí movité věci se použijí obdobně § 78 a 79.

(2) Orgán činný v trestním řízení příslušný k vydání příkazu k odnětí věci může při posouzení všech rozhodných okolností ponechat movitou věc na místě, kde se nachází, zejména pokud

a) odnětí takové věci by vedlo k jejímu znehodnocení nebo k znehodnocení věci, s níž je funkčně spojena,

b) odnětí takové věci by bylo spojeno s nepřiměřenými technickými obtížemi,

c) jde o věc vyžadující zvláštní péči nebo je péče o ni spojena s nepřiměřenými náklady, nebo

d) jde o věc nepatrné hodnoty.

(3) Pokud je movitá věc ponechána na místě, kde se nachází, tato skutečnost se spolu s důvodem takového postupu uvede do protokolu a movitá věc se náležitě vymezí tak, aby nebyla zaměnitelná s jinými. Orgán příslušný k vydání příkazu k odnětí věci zároveň vydá příkaz k zdržení se nakládání s věcí, v němž movitou věc náležitě a nezaměnitelně vymezí a zakáže, aby s ní bylo jakkoli právně jednáno nebo fakticky nakládáno způsobem, který by vedl k zmaření účelu jejího zajištění, zejména aby byla převedena na jiného, zatížena, poškozena nebo zničena. Zákaz působí vůči všem a je účinný okamžikem vyvěšení příkazu na místě, kde se movitá věc nachází; v tomto smyslu musí příkaz obsahovat poučení, včetně upozornění na následky spojené s porušením zákazu. Právní jednání učiněné v rozporu se zákazem uvedeným v příkazu je neplatné, přičemž soud k neplatnosti přihlédne i bez návrhu. Movitá věc ponechaná na místě se označí tak, aby bylo zřejmé, že se na ni vztahuje příkaz k zdržení se nakládání s věcí.

(4) Ponechání movité věci na místě, kde se nachází, nebrání tomu, aby orgán činný v trestním řízení příslušný k rozhodování o takové věci následně kdykoli vyzval k vydání takové věci nebo vydal příkaz k jejímu odnětí, má-li za to, že je to potřebné z hlediska účelu zajištění. Orgán činný v trestním řízení příslušný k rozhodování o vydané nebo odňaté movité věci může kdykoli rozhodnout, že ji ponechá z důvodů uvedených v odstavci 2 u osoby, které byla zajištěna; při tom postupuje přiměřeně podle odstavce 3. Proti takovému rozhodnutí není stížnost přípustná.

(5) Rozhodnutí o zajištění podle § 79a ohledně movité věci, která byla vydána nebo odňata podle odstavce 1 anebo která byla ponechána na místě podle odstavce 2, musí být vydáno do 96 hodin od takového úkonu.

(6) Orgán činný v trestním řízení příslušný k rozhodování o movité věci ponechané na místě nebo na základě příkazu předsedy senátu a v přípravném řízení státního zástupce policejní orgán je oprávněn pro účely kontroly dodržování příkazu k zdržení se nakládání s takovou věcí nebo pro účely odnětí takové věci vstoupit na místo, kde se věc nachází; přitom není oprávněn činit jiné úkony než ty, které souvisejí s výkonem kontroly dodržování příkazu nebo s odnětím věci. Pokud jde o obydlí nebo jinou prostorou, k jejíž prohlídce je potřebný příkaz soudce, a osoba, u níž se zajištěná věc nachází, se vstupem nesouhlasí, je orgán uvedený ve větě první v přípravném řízení oprávněn vstoupit do obydlí nebo jiné takové prostory po předchozím souhlasu soudce; policejní orgán si jej vyžádá prostřednictvím státního zástupce. Bez takového předchozího souhlasu může orgán uvedený ve větě první vstoupit do jiné prostory než obydlí, jestliže udělení souhlasu nelze předem dosáhnout a věc nesnese odkladu; je však povinen si bezodkladně dodatečně souhlas soudce vyžádat.

(7) Odstavce 1 až 6 se přiměřeně použijí i na zjištěné stroje nebo jiná upevněná zařízení, která jsou součástí nemovité věci a jsou oddělitelná.

(b) withdrawing the property would involve disproportionate technical difficulties;
(c) the property requires special care or its maintenance involves disproportionate costs;
or

(d) the property is of negligible value.

(3) If the movable property is left at its current location, this decision, along with the reason for it, shall be recorded in the protocol, and the property shall be clearly identified to prevent any confusion with other items. The authority competent to issue the withdrawal warrant shall also issue a warrant prohibiting any disposal of the item. This warrant must clearly and unambiguously identify the property and prohibit any legal or factual actions that could undermine the purpose of its seizure, including its transfer to another party, encumbrance, damage, or destruction. The prohibition applies to all persons and takes effect upon the posting of the warrant at the location of the movable property. The warrant must include a warning outlining the consequences of violating the prohibition. Any legal act in contravention of this warrant shall be null and void, and the court shall recognise such nullity *ex officio*. The movable property left in place shall be marked in a way that clearly indicates its status under the warrant prohibiting disposal.

(4) Leaving the movable property at its current location does not prevent the competent authority conducting criminal proceedings from later requesting its surrender or issuing a warrant for its withdrawal if deemed necessary to achieve the purpose of the seizure. The authority competent to decide on the seized movable property may at any time determine that it shall remain with the person from whom it was seized, for the reasons set out in paragraph 2, and shall follow the procedure set out in paragraph 3. No remedy is admissible against such a decision.

(5) A decision on the seizure of movable property under s. 79a, concerning property that has been surrendered, withdrawn under paragraph 1, or left in place under paragraph 2, must be issued within 96 hours of the respective action.

(6) The authority competent to decide on a movable item left in place, or, based on the warrant of the presiding judge and in pre-trial proceedings, the law enforcement agency, is authorised to enter the premises where the property is located for the purpose of verifying compliance with the warrant prohibiting its disposal or for its withdrawal. No actions other than those related to compliance verification or withdrawal may be taken. If the premises in question constitute a dwelling or another space requiring a judicial warrant for inspection, and the person in possession of the seized property does not consent to entry, the authority specified in the first sentence may enter the premises only with prior judicial authorisation, which the law enforcement agency shall obtain through the public prosecutor. If prior judicial authorisation cannot be obtained in time and immediate action is required, entry into non-residential premises without prior judicial authorisation is permissible; however, the authority must request judicial approval without delay.

(7) Paragraphs 1 to 6 shall apply *mutatis mutandis* to machinery or other affixed equipment that forms part of immovable property but is separable.

Section 79d Inspection of Immovable Property⁴¹²

4

(1) Based on a warrant for the inspection of immovable property issued by the presiding judge, or in pre-trial proceedings by a judge upon the proposal of the public prosecutor, the court, public prosecutor, or, upon their instruction, the law enforcement agency may conduct an inspection of immovable property and its accessories to assess its condition and determine the appropriateness of its seizure. The authority conducting the inspection shall inform the owner of the immovable property, or a person residing in the same household, as well as any person known to have rights to the property, of the time and place of the inspection. These persons are obliged to allow the inspection of the immovable property and its accessories.

(2) The inspection authority may involve other persons in the inspection if their participation is necessary, particularly for the valuation of the immovable property.

(3) If, during the inspection of immovable property, a movable item or a machine or other affixed equipment forming part of the immovable property and being separable is identified as meeting the conditions for seizure under s. 79a, the procedure set out in s. 79c(2) to (5) may be applied without the need for a warrant for a search of a dwelling or a search of non-residential premises and land.

Section 79e Effects of Seizure⁴¹³

5

(1) Any legal act performed by a person subject to the prohibitions set out in the decision to seize property in contravention of those prohibitions shall be null and void; the person must be informed of this consequence. The court shall take such nullity into account *ex officio*.

⁴¹² § 79d Ohledání nemovité věci

(1) Na základě příkazu k ohledání nemovité věci vydaného předsedou senátu a v přípravném řízení soudcem na návrh státního zástupce může soud nebo státní zástupce anebo na základě jejich pokynu policejní orgán provést ohledání nemovité věci a jejího příslušenství za účelem zjištění stavu nemovité věci a posouzení účelnosti jejího zajištění. Orgán činný v trestním řízení provádějící ohledání nemovité věci uvědomí o době a místě ohledání vlastníka nemovité věci nebo osobu, která s ním žije ve společné domácnosti, a dále osobu, o níž je známo, že má k nemovité věci práva. Tyto osoby jsou povinny prohlídku nemovité věci a jejího příslušenství umožnit.

(2) Orgán provádějící ohledání k němu může přibrat osoby, jejichž účast při ohledání je potřebná, zejména pro účely ocenění nemovité věci.

(3) Je-li při ohledání nemovité věci zjištěna movitá věc anebo stroj nebo jiné upevněné zařízení, které jsou součástí nemovité věci a jsou oddělitelné, u nichž jsou dány důvody pro jejich zajištění podle § 79a, lze postupovat obdobně podle § 79c odst. 2 až 5 i bez vydání příkazu k domovní prohlídce nebo prohlídce jiných prostor a pozemků.

⁴¹³ § 79e Účinky zajištění

(1) Právní jednání učiněné osobou, vůči níž směřují zákazy uvedené v rozhodnutí o zajištění, v rozporu se zákazy v něm uvedenými, je neplatné; o tom je třeba tuto osobu poučit. Soud k neplatnosti přihlédne i bez návrhu.

(2)⁴¹⁴ A seized item may only be disposed of in the course of enforcement proceedings, a public auction, execution, or insolvency proceedings with the prior consent of the presiding judge, or in the pre-trial proceedings, of the public prosecutor. To satisfy claims subject to enforcement, public auction, execution, or insolvency proceedings, priority shall be given to assets not affected by the decision to seize property.

(3) If the transfer or establishment of a right in respect of a seized item requires registration in a record maintained under other legal provisions, the authority or person responsible for maintaining such a record may, after receiving the decision to seize property, register the right in respect of the seized item based on a legal act performed by the person from whom the item was seized, only with the prior consent of the presiding judge or – in the pre-trial proceedings – the prior consent of the public prosecutor.

(4) If, under the Cadastral Act, an application for the registration of rights to immovable property in the land register was submitted based on a legal act performed by the person from whom the immovable property was seized before the issuance of the seizure warrant, and if the competent authority had not issued a final decision on the application by the time the seizure warrant was issued, the application shall lose its legal effect as of the date the seizure warrant becomes final.

(5) If a claim in a bank account is seized, the seizure shall apply to the funds present in the account at the moment the bank or another entity authorised to maintain accounts for third parties receives the decision to seize property, up to the amount specified in the decision, including any related charges. If the amount specified in the decision to seize property exceeds the balance in the account at that moment, the seizure shall also extend to any funds subsequently credited to the account, up to the specified amount, including any related charges. Unless otherwise provided by law, from the moment the seizure

⁴¹⁴ (2) S věcí, na kterou se vztahuje rozhodnutí o zajištění, lze v rámci výkonu rozhodnutí, veřejné dražby, exekuce nebo insolvenčního řízení nakládat jen po předchozím souhlasu předsedy senátu a v přípravném řízení státního zástupce. Na úhradu pohledávek, které jsou předmětem výkonu rozhodnutí, veřejné dražby, exekuce nebo insolvenčního řízení, se přednostně použije věc nedotčená rozhodnutím o zajištění.

(3) Je-li k převodu nebo ke zřízení práva k zajištěné věci nutný zápis do evidence vedené podle jiných právních předpisů, orgán nebo osoba, které vedou takovou evidenci, mohou po doručení rozhodnutí o zajištění provést zápis k takové věci na základě právního jednání osoby, jíž byla věc zajištěna, jen s předchozím souhlasem předsedy senátu a v přípravném řízení státního zástupce.

(4) Byl-li podle katastrálního zákona podán návrh na zápis práv k nemovité věci do katastru nemovitostí na základě právního jednání osoby, jíž byla nemovitá věc zajištěna, před vydáním usnesení o jejím zajištění, a do doby vydání usnesení o jejím zajištění o něm nebylo příslušným orgánem pravomocně rozhodnuto, ztrácí podaný návrh své právní účinky ke dni nabytí právní moci usnesení o jejím zajištění.

(5) Je-li zajištěna pohledávka na účtu, zajištění se vztahuje na peněžní prostředky, které se nacházejí na účtu v okamžiku, v němž je bance nebo jinému subjektu, který vede účet pro jiného, doručeno rozhodnutí o jejich zajištění, až do výše částky uvedené v tomto rozhodnutí a jejího příslušenství. Převyšuje-li částka uvedená v rozhodnutí o zajištění zůstatek peněžních prostředků na účtu, vztahuje se zajištění i na peněžní prostředky, které na účet dodatečně dojdou, a to do výše částky uvedené v rozhodnutí, včetně jejího příslušenství. Nestanoví-li tento zákon jinak, od okamžiku doručení usnesení o zajištění pohledávky na účtu bance nebo jinému subjektu oprávněnému vést účet pro jiného je zakázáno jakkoli disponovat s peněžními prostředky, které se na účtu nacházejí, až do výše zajištění.

warrant is delivered to the bank or other authorised entity, it shall be prohibited to dispose of the funds in the account up to the amount subject to seizure.

Section 79f Revocation or Limitation of Seizure⁴¹⁵

6

(1) The seizure of an item shall be revoked or limited if it is no longer necessary or is not required to the extent originally determined. If the seizure of an item that was left in its original location is revoked, the warrant prohibiting its disposal shall also be lifted.

(2) The person from whom the item was seized has the right to request the revocation or limitation of the seizure at any time after the seizure warrant becomes final. Such a request must be decided without delay. If the request is rejected, the person may submit a new request only after 30 days have elapsed from the date the rejection decision became final, unless new grounds are presented.

(3) The decision to revoke or limit the seizure is made by the presiding judge, or in pre-trial proceedings, by the public prosecutor or, with their prior consent, by the law enforcement agency.

(4) A complaint⁴¹⁶ against a decision to revoke or limit a seizure shall be admissible and shall have suspensive effect.

(5) A final abbreviated decision revoking or limiting the seizure, without reasoning, shall be delivered to the authorities and persons who were originally notified of the decision to seize property. Authorities and persons who were informed of the seizure must also be notified of the revocation or limitation; in the case of a limitation, only those affected by the limitation shall be notified.

Section 79g Seizure of a Replacement Value

7

(1)⁴¹⁷ If an item that constitutes an instrument of crime or proceeds of crime cannot be seized, a replacement value corresponding, even partially, to its worth may be seized

⁴¹⁵ § 79f Zrušení nebo omezení zajištění

(1) Zajištění věci se zruší nebo omezí, není-li jej již třeba nebo jej není třeba ve stanoveném rozsahu. Bylo-li zrušeno zajištění věci, jež byla ponechána na místě, kde se nachází, odvolá se též příkaz k zdržení se nakládání s věcí.

(2) Osoba, jíž byla věc zajištěna, má právo kdykoliv po právní moci usnesení o zajištění žádat o zrušení nebo omezení zajištění. O takové žádosti je třeba neodkladně rozhodnout. Byla-li žádost zamítnuta, může ji tato osoba, neuvede-li nové důvody, opakovat až po uplynutí 30 dnů od právní moci rozhodnutí.

(3) O zrušení nebo omezení zajištění rozhoduje předseda senátu a v přípravném řízení státní zástupce nebo s jeho předchozím souhlasem policejní orgán.

(4) Proti rozhodnutí o zrušení nebo omezení zajištění je přípustná stížnost, která má odkladný účinek.

(5) Pravomocné zkrácené rozhodnutí o zrušení nebo omezení zajištění bez odůvodnění se doručí orgánům a osobám, kterým bylo doručeno rozhodnutí o zajištění. Orgány a osoby, které byly o rozhodnutí o zajištění vyrozuměny, je třeba vyrozumět i o rozhodnutí uvedeném ve větě první; o omezení zajištění se vyrozumí jen ty z nich, kterých se omezení týká.

⁴¹⁶ Please note the distinction between a complaint [stížnost] and a criminal complaint [trestní oznámení], as discussed under Part B.II, Art 26 EPPO Regulation, Chapter 2.2.7, letter c, i).

⁴¹⁷ § 79g Zajištění náhradní hodnoty

instead. The procedure for such seizure shall follow the relevant provisions governing the seizure of items that are instruments or proceeds of crime (ss. 79a–79f). A replacement value may be seized from a person who would have been obliged to tolerate the seizure of the original item.

(2) For significant reasons, the presiding judge, or in pre-trial proceedings, the public prosecutor may, upon request of the person from whom the replacement value was seized, permit a transaction related to the seized replacement value. A complaint against such a decision shall be admissible and shall have suspensive effect.

8 Section 79h Substitution of a Seized Item⁴¹⁸

(1) Provided that it does not jeopardise the purpose of the criminal proceedings, the presiding judge, or in pre-trial proceedings, the public prosecutor or, with their prior consent, the law enforcement agency, may decide to seize monetary assets instead of another previously seized item, if the person from whom the item was seized deposits an amount equivalent to the value of the seized item into the custody of the competent criminal authority.

(2) A complaint against a decision under paragraph 1 shall be admissible and shall have suspensive effect.

(1) Nelze-li zajistit věc, která je nástrojem trestné činnosti nebo výnosem z trestné činnosti, může být místo ní zajištěna náhradní hodnota, která odpovídá, byť jen zčásti, její hodnotě; přitom se postupuje obdobně podle příslušných ustanovení upravujících zajištění věci, která je nástrojem trestné činnosti nebo výnosem z trestné činnosti (§ 79a až 79f). Náhradní hodnotu lze zajistit osobě, která měla povinnost strpět zajištění původní věci.

(2) Z důležitých důvodů může předseda senátu a v přípravném řízení státní zástupce povolit na návrh osoby, které byla náhradní hodnota zajištěna, provedení úkonu, který se týká zajištěné náhradní hodnoty. Proti takovému rozhodnutí je přípustná stížnost, která má odkladný účinek.

⁴¹⁸ § 79h Změna zajištěné věci

(1) Není-li tím ohrožen účel trestního řízení, předseda senátu a v přípravném řízení státní zástupce nebo s jeho předchozím souhlasem policejní orgán může rozhodnout o zajištění peněžních prostředků namísto jiné věci, která byla zajištěna, pokud ten, komu byla taková věc zajištěna, složí do úschovy příslušného orgánu činného v trestním řízení peněžní prostředky ve výši odpovídající hodnotě zajištěné věci.

(2) Proti rozhodnutí podle odstavce 1 je přípustná stížnost, která má odkladný účinek.

4. Annex IV: Internal Rules of Procedure (EPPO)

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), (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.

Annex IV

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.

5. Annex V: Draft Amendment to Criminal Statutes

5.1. Substantive Law

Readers should be advised that, at the time of submission of this manuscript, a relevant draft amendment remained pending before the Chamber of Deputies of the Czech Republic and was proceeding through the legislative process.⁴¹⁹ While the precise outcome remains uncertain and the final wording of the proposed provisions may still be subject to revision, the passage of the amendment appears likely. The most pertinent anticipated changes are accordingly highlighted below.

With regard to criminal substantive law, to date, a degree of disparity has persisted between the sanctioning regimes applicable to natural persons and legal persons (see Chapter I.2.3.2) particularly insofar as the penalties of **disqualification from receiving public funding or subsidies** and the **disqualification from public procurement processes** have hitherto been reserved exclusively for legal persons. The proposed amendment to the Criminal Code, however, would **extend** the applicability of both sanctions to **natural persons**. The legislature has ultimately opted to follow the model established for other disqualification penalties. Accordingly, the maximum duration of such sanctions would remain ten years for natural persons, while continuing to be twenty years in the case of legal persons.

Another significant development brought by the amendment to the sanctioning regime is the **near-universal applicability of the monetary penalty**. Until now, the only truly universal sanction available across the entire spectrum of criminal offences was imprisonment. With the entry into force of the amendment, it would become possible to impose a monetary penalty for all offences – with the exception of some criminal offences. The list is still subject to discussion but will likely include criminal offences under Title III of the Special Part of the Criminal Code (**offences against human dignity in the sexual sphere**) and **all particularly serious felonies**.

This shift in paradigm would be then reflected in numerous amendments throughout both the General and Special Parts of the Criminal Code. While the basic structure for calculating the monetary penalty is likely to remain unchanged – i.e. the product of the number of daily rates and the amount of a single daily rate – **the upper limit on the number of daily rates would be removed to accommodate the newly expanded applicability**. Henceforth, the maximum number of daily rates shall correspond to the upper limit of the custodial sentence prescribed for the offence in question. This necessitates the amendment of every offence within the Special Part of the Criminal Code that

⁴¹⁹ The most recent draft amendment can be found here: <https://www.psp.cz/sqw/historie.sqw?o=9&T=861>. Accessed 31 March 2025.

provides for the imposition of a monetary penalty, including those enumerated in Annex II. Particular caution is therefore warranted in this respect.

- 5 Several significant reforms to substantive criminal law are currently under consideration. In addition to the introduction of new offences – such as the s. 191a CC (criminalisation of identity abuse for the production and dissemination of pornographic content), which is intended to address so-called deepfake pornography and bring domestic legislation in line with Regulation (EU) 2024/1385 – important reforms are pending in other areas as well. One such area concerns narcotics offences. A comprehensive revision of ss. 283–286 CC is expected to reflect a more lenient approach towards so-called “soft drugs”. Similarly, the long-debated provision of s. 196 CC (non-payment of child maintenance) is under review, with discussions focusing on its scope, proportionality, and systemic role within the wider sanctioning structure (see above for details).
- 6 Turning to **property and economic offences**, legislative changes are also anticipated in relation to criminalisation of recidivism. While it remains uncertain in what final form the proposed reform of recidivist theft will be adopted, it may well have broader implications beyond theft itself. Specifically, other **enrichment-related offences – such as fraud, embezzlement, or unauthorised use of property** – may likewise see a repeal or revision of the **special qualifying circumstance of recidivism**, which currently serves as a precondition for applying higher sentencing ranges. For the exact legislative formulation of recidivism in EPPO-related offences, see Annex II (e.g. the provision on fraud).

5.2. Procedural Law

- 7 Should the proposed amendment pass through Parliament, several relevant **procedural reforms** would directly **impact criminal proceedings, including matters addressed in this manuscript**. One significant change would concern the amendment of the **statutory obligation of authorities involved in criminal proceedings to inform individuals subject to the wiretapping and re-cording of telecommunications** under s. 88 CCP and s. 88a CCP concerning the retrieval of telecommunications traffic data. The proposed revision seeks to exclude from this obligation those individuals who **became aware of the interception from the case file** and had the opportunity to challenge it, for instance, through judicial review. The primary objective is to eliminate duplication and avoid situations where the legality of the same measure is assessed both within the criminal proceedings themselves and again by the Supreme Court in the context of an independent review.
- 8 In parallel, the amendment introduces a **fixed deadline** for the provision of information to affected individuals. The period, currently six months, is proposed to be shortened to thirty days. If an individual seeks judicial review of the lawfulness of

the interception, the request would no longer be submitted directly to the Supreme Court. Instead, it would be **forwarded by the authority that provided the notification** – be it the public prosecutor or the law enforcement agency – along with its own assessment and the complete case file. The proposed legislation further differentiates between cases where the interception **produced evidence** and those where it **did not**, with implications for which authority bears the notification duty and whether the recording is retained or destroyed.

Another key reform responds to the requirements of the European Court of Human Rights, which has held that individuals must be informed of the interception as soon as doing so no longer jeopardises the investigation. In line with this, the amendment abolishes the objective limitation period for filing a request for review and instead imposes a duty on the competent authority to **continuously assess whether the justification for withholding the notification remains valid**. If that justification ceases to apply, the information must be provided without delay. 9

Corresponding changes are also proposed for the regime governing the **retrieval of telecommunications traffic data**, so as to ensure that the notification and review mechanisms are harmonised across both investigative measures. 10

The proposed amendments concerning so-called undercover agents and the admissibility of evidence obtained through their activities are aimed at enhancing legal certainty, preventing abuse, and safeguarding fundamental principles of the rule of law. This pertains also to s. 158e CCP, which was discussed in relation to the **use of an agent** as means of operational search available under Article 30 EPPO Regulation. 11

The first key change is the **express prohibition of police entrapment**, in accordance with the case law of the European Court of Human Rights. Where an individual is incited by law enforcement to commit a criminal offence, this constitutes a violation of the right to a fair trial, regardless of the observance of other procedural safeguards. This prohibition would be explicitly introduced in the new final sentence of subsection 6. 12

Simultaneously, the legal framework for **agent indemnity** under s. 158e(7) CCP would be revised. The new regulation frames it not as a blanket rule, but as **an exception to the principle of legality**, contingent on the satisfaction of both a positive condition (that the agent's conduct was aimed at detecting or preventing specified offences) and the absence of any of the negative conditions listed under points (a) to (d). It will no longer be required that the agent be a member of or participant in an organised criminal group; **it suffices that the act was committed with the aim of exposing the criminal activity listed in the statute**. The newly worded subsection 7 is designed to replace the existing concept of agent indemnity as a principle of criminal substantive law, repealing ss. 312c, 363 CC, turning it into a procedural rule. 13

- 14 The amendment also includes an explicit enumeration of offences for which the agent shall always be prosecuted – most notably crimes against humanity, such as torture under s. 149 CC. Beyond these, an agent will be criminally liable if the conduct results in death or grievous bodily harm, if the agent acts manifestly disproportionately, or if the agent violates the prohibition against initiating the offence.
- 15 Furthermore, the proposal stipulates **that information obtained by the agent may only be used in proceedings relating to the offences for which the agent could have been lawfully deployed under the statute**. This clarification responds to inconsistencies in existing practice concerning the use of such evidence in unrelated cases. Draft subsection 10 explicitly provides that the information may be relied upon only where it pertains to offences listed in s. 158e(1) CCP.
- 16 Finally, the proposal addresses the risk of agent exposure in cases where the defence alleges entrapment, thereby triggering an internal investigation by the General Inspectorate of Security Forces. In such situations, the agent’s covert identity may be compromised. In response, a special provision is introduced to prevent such outcomes. This includes an amendment to the mechanism of **temporary deferral of criminal investigation** under s. 159b CCP, aimed at preserving operational secrecy and procedural integrity.
- 17 With regard to **diversions**, settlement [*narovnání*] pursuant to s. 309 CCP is likely to be subject to further legislative amendment.

5.3. Legal Persons

- 18 The newly introduced provisions s. 29a and s. 36a of the Act on Criminal Liability of Legal Persons serve to supplement the general provisions of the CCP. The **discontinuance of criminal proceedings** [*odložení věci*], generally governed by s. 159a CCP, constitutes a non-meritorious decision adopted at the stage preceding the initiation of criminal investigation (“verification”). It is applied where the authorities involved in criminal proceedings decide not to continue the inquiry – typically in situations where a suspect cannot be identified, where the conduct in question does not appear to constitute a criminal offence, or where it is doubtful that any offence has occurred at all. Owing to its non-meritorious character, such a decision does not preclude further investigation should new circumstances arise.
- 19 By contrast, the **termination of criminal investigation** [*zastavení trestního stíhání*], generally under s. 172 CCP, is applicable once proceedings have been formally initiated against a specific person as the accused. Unlike discontinuance of criminal proceedings, this constitutes a meritorious decision.
- 20 The introduction of specific grounds for such decisions in relation to legal persons is motivated by the recognition that, in certain circumstances, further procedural steps

taken *ex officio* may not be meaningful or in the public interest. The aim is to **broaden the exceptions to the principle of legality in cases where alternative measures** – such as the **dissolution** of the legal person – may offer a more appropriate and effective course of action than criminal investigation.

A new form of diversion is being introduced in the form of **conditional waiver of criminal proceedings** [*podmíněné upuštění od trestního stíhání*], which, in its general character, **resembles conditional suspension of investigation** under s. 307 CCP, albeit with specific adaptations for legal persons. Unlike other forms of diversion, this new mechanism is intended to be available **already at the stage of proceedings prior to investigation**, that is, prior to the formal initiation of investigation of a specific person as an accused.

21

During the probationary period, the legal person may, in addition to the standard conditions provided under s. 37b CCP, be required to refrain from certain activities, **implement a set of preventive and corrective measures, and submit to their monitoring**. To ensure the proper implementation of this mechanism, the draft legislation introduces the concept of a **set of preventive and corrective measures**, which is to include targeted steps to improve the functioning of the legal person, for example by addressing a corporate culture conducive to legal non-compliance. It also introduces a formal system of monitoring compliance with such measures. Such monitoring may be performed by **auditors**, or, according to some versions of the draft amendment, by **defence counsel specialising in compliance**.

22

The monitoring would be carried out by a person selected from a pre-approved list, nominated by the legal person. The final approval or rejection of the nominated individual would lie with the court or the public prosecutor, based on an assessment of the nominee's independence and suitability. Unless otherwise specified, the monitor is required to submit progress reports at least once per year.

23

C. OLAF Regulation

While the EPPO Regulation has remained largely unchanged since its initial publication up to the time of submitting this manuscript, the OLAF Regulation, being enacted earlier, has already undergone revisions, the most recent of which took place in 2020. The current OLAF Regulation (EU, EURATOM) No 883/2013 of 11 September 2013 was amended by the draft version of 16 April 2019, which entered into force on 22 December 2020 with Regulation 2020/2023.⁴²⁰ Given these amendments, older Czech texts on the subject should always be critically assessed in light of the most recent legislative developments to ensure their continued accuracy and relevance.

OLAF operates as an **administrative EU enforcement authority**⁴²¹ and applies a distinct method of enforcement in combating fraud detrimental to the EU's financial interests.⁴²²

I. General Introduction: Investigative Powers and National Law Related to OLAF in the Czech Republic (Art 1–8 OLAF Regulation)

1. Introductory Remarks on OLAF's Role

OLAF's tasks, roles and actions are primarily governed by Union law. Known in the Czech Republic as "*Evropský úřad pro boj proti podvodům*", its history can be traced back to the early 2000s and its **predecessor, UCLAF**.⁴²³ OLAF has assumed a renewed role within the evolving **anti-fraud architecture** of the Union in the 2020s and remains a significant actor in combating fraud within the framework of the Union's legislation and policies, which depend on Member States' actions and politically negotiated agreements.

Unlike national judicial and investigative authorities, OLAF **does not possess direct decision-making powers** once its report is concluded. This structural independence presents both **advantages and limitations**, allowing OLAF to operate with flexibility while relying in many cases on national enforcement mechanisms for the implementation of

⁴²⁰ See 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 December 2020, p. 49–73.

⁴²¹ See contributions in Franssen and Harding 2022 analysing the EU's enforcement sector.

⁴²² See Luchtman 2023, pp. 7 (10: "The Office operates at the brink of administrative law and criminal law" [...]) In fact, many OLAF cases end in disciplinary or recovery procedures. This highlights the Office's complicated institutional position. [...] That means OLAF needs to cooperate with a wide variety of partners, as national legal orders are organized in very different ways.", 23 et seq. explaining the models to distinguish procedures OLAF is involved in) focusing on the so-called "composite enforcement procedures"; Bovend'eerd 2024, p. 3 et seq. uses this precise notion as well.

⁴²³ See Hauck 2025a, Chronology Chapter 3 and 4 on the historical debates in the late 1980s and 1990s, the setting-up of the anti-fraud bodies and the relevant legislation; see as well Hauck (*in press – b*), Commentary on Art. 1 OLAF Regulation, mn. 24–28: "To make matters worse, UCLAF unfortunately turned out to be a real nonstarter in the course of the 1990s."

its findings. Nonetheless, to enhance cooperation, particularly in external investigations, OLAF maintains close operational ties with national police and judicial authorities, as well as with transnational bodies and EU-level agencies, most notably Europol and Eurojust.

- 5 Crucially, OLAF is empowered to conduct both **external and internal investigations**. While **external** investigations focus on on-site inspections at economic operators' premises within EU Member States and, when permitted, in third countries and international organisations, **internal** investigations target misconduct within EU institutions, bodies, and agencies.
- 6 External investigations primarily seek to uncover fraud, bribery, and other illicit activities related to EU-funded grants, contracts, or decisions, whereas internal investigations examine breaches of duty by EU officials, employees, and decision-makers. Each type shall be explored in relation to national statutes throughout Part C.
- 7 With regard to the Czech Republic, the last publicly available AFCOS Report focuses more in detail on the anti-fraud environment in the Czech Republic – and is examined below (see Art 12a OLAF Regulation).
- 8 The Czech Republic has made considerable investments to make the system more transparent and adopted new statutes focusing on targeting fraudulent financial reporting in the private sector and improving whistleblowing **reporting structures** within the country (see Part A.III, Chapter 3).
- 9 OLAF did not hesitate to act even in high-profile matters. It conducted an investigation into the then-designated Prime Minister over suspicions of a conflict of interest, raising concerns about the alleged misuse of EU funds with potential criminal implications. However, the case was later dismissed by the court, and the accused – by then already the former Prime Minister – was acquitted of all charges.⁴²⁴

1.1. Legal Framework and Guidelines

- 10 Primary statute governing this matter is **the OLAF Regulation**, which is directly applicable in all Member States. OLAF and its investigators are required to adhere to internal **guidelines**,⁴²⁵ procedural manuals,⁴²⁶ reports and working arrangements with Union

⁴²⁴ See <https://www.seznamzpravy.cz/clanek/domaci-kauzy-babisuv-soudce-neposlouchal-olaf-tri-dukazy-ktere-pominul-230436>. Accessed 31 March 2025.

⁴²⁵ See EU Commission (OLAF) 2021, p. 3. For all translations of the guidelines, see OLAF 2016.

⁴²⁶ Brünér 2009, whereby it is unclear if certain manuals are really still used by investigators and the Office staff. See Hauck (*in press – b*), Commentary on Art 1 OLAF Regulation, mn. 75, for a discussion of the work of the directorates responsible for implementing the Office's operational tasks; and mn. 79, concerning the performance of OLAF's functions by its staff, who may rely on manuals, internal guidelines, and similar instruments.

partners,⁴²⁷ as well as Administrative Cooperation Agreements with national partners and EU external actors.

OLAF also issues compendia, conducts research and organises meetings, conferences and workshops for its national partners. Such non-binding guidelines and handbooks may prove valuable during investigations.⁴²⁸ Statistics on the latest actions conducted in the past year are detailed in **OLAF Reports**, which complement the EPPO's annual report and the PIF Report⁴²⁹ issued by the European Commission. These reports are prepared in close cooperation with OLAF, and with input from the European Court of Auditors, national AFCOS, governments and researchers. **11**

A landmark judgment *Sigma Orionis* by the CJEU⁴³⁰ in the last decade clarified the interplay between national and Union law⁴³¹ in relation to OLAF's external investigations.⁴³² In the light of this jurisprudence, resistance to OLAF's actions may invoke the **applicability of national law**,⁴³³ which is sometimes used as a defence strategy by economic operators, who rely on familiar legal frameworks. **12**

In such instances, OLAF must depend on national investigators with comparable tasks, powers and limitations, as well as the thresholds and conditions prescribed by national law. These include constitutional limits, investigative powers over budget spending and structural funds (direct management) and obligations related to revenue (indirect management). That is why substantial attention is paid to external investigation when analysing Art 3 OLAF Regulation further below. **13**

In the Czech Republic, OLAF's role and coordination with national authorities is governed by the **Act on the Coordination of Cooperation with OLAF** [zákon č. 34/2023 Sb., o koordinaci spolupráce s Evropským úřadem pro boj proti podvodům]. For a comprehensive list of relevant national statutes, see Part A.III, Chapter 3. **14**

With regard to other nationally available materials pertaining to OLAF, readers should refer to the National Strategy on the Protection of the Financial Interests of the EU [*Národní strategie na ochranu finančních zájmů Evropské unie*],⁴³⁴ which was amended **15**

⁴²⁷ See Working Arrangement between EPPO and OLAF. Available at: https://www.eppo.europa.eu/sites/default/files/2021-07/Working_arrangement_EPPO_OLAF.pdf. Accessed 31 March 2025.

⁴²⁸ See EU Commission 2009; EU Commission 2011; EU Commission 2013; EU Commission 2017a; EU Commission 2017b.

⁴²⁹ See EU Commission 2022b, 2022c and EU Commission 2024.

⁴³⁰ GC, Case T-48/16, *Sigma Orionis SA v Commission*, Judgment of 3 May 2018, paras. 70 et seq., 80–81. ECLI:EU:T:2018:245.

⁴³¹ See De Bellis 2021, pp. 431 et seq.; Herrnfeld 2021 pp. 426 et seq.; recently Wouters 2020, pp. 132 et seq.

⁴³² de Bellis 2021, pp. 431 et seq.; see OLAF 2022c.

⁴³³ As noted by Luchtmann (2023, p. 23), although OLAF possesses the authority to carry out on-the-spot checks, it remains heavily reliant – both legally and in practice – on cooperation with national partners.

⁴³⁴ Available at: <https://www.mfcr.cz/cs/zahranici-a-eu/ochrana-financnich-zajmu/financni-zajmy-eu/narodni-strategie-na-ochranu-financnich-zajmu-eu>. Accessed 31 March 2025.

in 2024, along with its appendices. Accompanying action plans are published alongside the strategy and are evaluated on an annual basis.⁴³⁵

- 16 Furthermore, AFCOS regularly publishes related materials. Although the AFCOS Annual Report has not been published since 2021, it still serves as a useful referential framework.⁴³⁶ Additional materials are also made available, such as the Analysis of Final Judgments under Section 260 of the Criminal Code [*Analýza pravomocných rozsudků dle § 260 trestního zákoníku*].⁴³⁷
- 17 It should be noted that the Czech Republic also adopted the **National Recovery Plan** [*Národní plan obnovy*]. An accompanying document that will remain important until at least 2026, and potentially as late as 2029 (the projected end date for national recovery plans), is the **Methodological Guidance on Discrepancies for the National Recovery Plan 2021–2026** [*Metodický pokyn pro nesrovnalosti pro Národní plan*].⁴³⁸

These materials, among others, shall be referenced where necessary.

1.2. OLAF's Process of Conducting an Investigation

- 18 OLAF plays a well-established role within the Union's anti-fraud architecture and academic research on its operations has been extensive and enduring since the 2000s.⁴³⁹
- 19 OLAF investigations are structured in **three phases** to ensure efficiency and clarity in addressing fraud, corruption, and other unlawful activities affecting the financial interests of the European Union. The first phase, **initiation**, determines whether the case falls within OLAF's mandate and meets the necessary criteria for investigation. If so, OLAF formally opens the case and begins gathering relevant information.
- 20 The second phase, **investigation**, involves on-site inspections, document analysis, interviews with relevant individuals, and coordination with national authorities and EU institutions. Throughout this stage, OLAF exercises its broad investigative powers to access relevant data, conduct financial audits, and assess the impact of fraudulent activities.

⁴³⁵ Ibid.

⁴³⁶ Available at: https://www.mfcr.cz/assets/cs/media/2021-12-31_Zprava-CKB-AFCOS-2021.pdf. Accessed 31 March 2025.

⁴³⁷ Available at: <https://www.mfcr.cz/cs/zahranici-a-eu/ochrana-financnich-zajmu/financni-zajmy-eu/cinnost-ckb-afcos>. Accessed 31 March 2025. See for the most recent analysis: <https://www.mfcr.cz/cs/zahranici-a-eu/ochrana-financnich-zajmu/financni-zajmy-eu/cinnost-ckb-afcos/2023/analiza-pravomocnych-rozsudku-dle--260-trestniho-z-55771>. Accessed 31 March 2025.

⁴³⁸ Available at: <https://www.mfcr.cz/cs/zahranici-a-eu/ochrana-financnich-zajmu/financni-zajmy-eu/hlaseni-nesrovnalosti-na-vnejsi-urovni/metodicky-pokyn-pro-nesrovnalosti-pro-na-48104>. Accessed 31 March 2025. The Methodological Guideline for Irregularities for the National Recovery Plan creates the basic framework reporting of discrepancies arising from the implementation of the Recovery and Resilience Tool – Recovery and Resilience Facility (“RRF”). National Recovery Plan as well as accompanying documents can be found at: <https://planobnovy.gov.cz/o-npo/ke-stazeni/>. Accessed 31 March 2025.

⁴³⁹ Brüner 2001, pp. 17–26; Brüner 2008, pp. 859–872; Brüner 2009, p. 1 *passim*; Gellert 2009, pp. 85–88.

The final phase, **conclusion**, results in a comprehensive investigative report outlining OLAF's findings and recommendations. 21

Following such report, national proceedings often take place, typically resulting in **administrative sanctions** in cases of misconduct or fraud. However, where criminal elements are identified, the matter may be referred either to **national prosecution authorities or to the EPPO**, depending on the case's jurisdictional and procedural framework (for details on OLAF–EPPO cooperation, see Part B, Chapter 4 and below Art 8 OLAF Regulation). 22

OLAF's mandate remains **strictly administrative** in nature and does not extend to criminal investigations or judicial proceedings, which remain within the jurisdiction of national courts and the EPPO. 23

1.3. Current Debate about OLAF's Powers

Current debates focus on the effectiveness of investigations into digital evidence under **Regulation 2185/96**, which governs on-the-spot checks and is partly hindered by insufficiently digitalised investigations.⁴⁴⁰ Increasingly, it is becoming evident that the persistence of analogue practices in law enforcement and criminal justice in many countries in the first half of the 2020s poses a significant challenge. As the digital age advances faster than legal frameworks can adapt, criminal offences committed via digital tools are becoming increasingly serious threats and more commonly employed methods in large-scale international crime. This creates obstacles to effective investigations by both OLAF and the EPPO. 24

Access to bank accounts and registers is critically important for OLAF investigators and those with similar responsibilities, such as audit staff and civil servants from various ministries. This access was strengthened by changes introduced in **Regulation 2020/2223**, which also addresses the relationship between OLAF and the EPPO. This relationship is intended to be close, particularly with regional centres of the EDPs in all Member States. Furthermore, effective coordination of external investigations is essential and should be managed by the relevant AFCOS (see below Art 12a OLAF Regulation). 25

Another longstanding issue relates to **OLAF's final reports** in individual cases (cf. Art 11), which may have relevance even for national criminal trials. These reports are relevant both to EPPO cases (see Art 23–28 EPPO Regulation) and cases below the thresholds where EDPs could exercise their competence and jurisdiction on behalf of the EPPO. This topic has been thoroughly researched in professional studies by Luchtman and Vervaele on OLAF over the past decade, which are referenced here.⁴⁴¹ 26

⁴⁴⁰ See Carrera and Mitsilegas 2021.

⁴⁴¹ See Luchtman and Vervaele 2017.

27 With respect to detected criminal practices relevant to OLAF's jurisdiction, the enduring findings of the national AFCOS 2020 Annual Report merit attention, as they offer a valuable synopsis of the prevailing circumstances in recent years.

28 *Case Study 3: Modus Operandi of Cases Discovered by OLAF*

	<i>Modus Operandi of Cases Identified by OLAF and Referred to National Authorities or Vice Versa</i>
	“As for the criminal conduct, the most common offences in the final judgments received in 2020 involved violating subsidy conditions by purchasing used machines or equipment and using fictitious invoices, documents, or labels to pass them off as new. Offences also included claiming investments in equipment where no technological upgrades occurred or where the upgrades had properties and parameters differing from those specified. These actions often appear in connection with manipulated or fictitious tender procedures, the course of which was documented with false records. Such records artificially inflated the supply price within a chain of business relationships, enabling the price to cover the costs of the supplied equipment and conceal other illicit activities of the offenders. The final judgments also revealed claims for reimbursement of construction works that were either not carried out at all or only partially completed, contrary to the declared scope indicated in the subsidy application. Last but not least, some educational events were either not implemented or implemented in a manner differing from the declared format.”⁴⁴² Given the prevalence of this <i>modus operandi</i>, it is advisable that OLAF investigators, inspectors, seconded national experts and administrative officers remain particularly vigilant in identifying it.

1.4. Structure of Part C

29 Part C, similarly to Part B on the EPPO and its investigative powers, provides a bilingual collection of the relevant statutes. This includes recently adopted or amended **on-the-spot checks statutes** (in relation to Regulation (EC) 2185/96, as amended). The text also elaborates on OLAF's investigative powers in the Czech Republic by referencing the national authorities responsible for measures such as on-the-spot checks.

30 Given the distinct terminology used in the OLAF Regulation, Arts 1 and 2 are introduced, despite not serving as a framework for analysing national statutes, which remains the primary focus of this compendium.

⁴⁴² See Report on the Activities of the AFCOS Central Contact Point for the Year 2020, p. 10.

2. Art 1 and 2 Objectives, Tasks and Definitions

Articles 1 and 2 OLAF Regulation define key terms and outline the role of OLAF:

31

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 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.

32 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.

2.1. “Irregularities”: Their Reporting to OLAF under Czech Law

One of the key definitions referenced in the above articles pertains to the term **irregularity**. For the term irregularity, see above Art 2(1) OLAF Regulation in connection with Art 1(2) of Regulation (EC, Euratom) No 2988/95. While the term itself is important, its practical implementation within Czech statutes to facilitate cooperation with OLAF is equally significant. **Reporting** irregularities and offences is essential, as relevant bodies cannot act without notification.

The Ministry of Finance – Central Contact Point AFCOS is responsible for the methodical interpretation of irregularity reporting at the national level and for general communication with OLAF. Nonetheless, in the Czech Republic, there is **no uniform** rule on who is responsible for **reporting irregularities** to OLAF, as this depends on the nature of the irregularity and the specific circumstances of the case.

Firstly, in cases of **alleged administrative offences**, the responsible authority is the **Ministry of Finance – AFCOS Central Contact Point** [CKB AFCOS, *Ministerstvo financí – Centrální kontaktní bod AFCOS*; see Art 12a OLAF Regulation].⁴⁴³

Secondly, where **suspicions involve potential criminal liability**, the competent authority is the **Supreme Prosecutor’s Office** [NSZ, *Nejvyšší státní zastupitelství*]. Given its role in uncovering this type of criminal activity, the **National Headquarters Against Organised Crime of the Criminal Police and Investigation Service** [NCOZ, *Národní centrála proti organizovanému zločinu Služby kriminální policie a vyšetřování*] is also relevant. In recent reports, NCOZ has been explicitly listed as a reporting authority;⁴⁴⁴ however, the appendix maintains the primary role with NSZ.⁴⁴⁵

⁴⁴³ The current National Strategy on the Protection of the Financial Interests of the EU 2024 [Národní strategie na ochranu finančních zájmů EU] can be downloaded from the website of the Ministry of Finance: <https://www.mfcr.cz/cs/zahranici-a-eu/ochrana-financnich-zajmu/financni-zajmy-eu/narodni-strategie-na-ochranu-financnich-zajmu-eu>. Accessed 1 December 2024. See National Strategy on the Protection of the Financial Interests of the EU 2024, p. 18.

⁴⁴⁴ Ibid.

⁴⁴⁵ Annex 4 to the National Strategy on the Protection of the Financial Interests of the European Union – Entities Involved in the Protection of the EU’s Financial Interests in the Czech Republic [Příloha 4 k Národní strategii na ochranu finančních zájmů Evropské unie – Subjekty podílející se na ochraně finančních zájmů EU v ČR], p. 6.

- 37 Lastly, for the revenue side of the budget, the competent authority is the **General Directorate of Customs** [*Generální ředitelství cel*].⁴⁴⁶
- 38 OLAF has developed a **special classification table for internal use** to assist investigators and inspectors conducting audits in distinguishing between different types of fraud and irregularities.
- 2.2. Legal Basis for Cooperation with OLAF (No 34/2023 Coll.)**
- 39 Recently, the Act on Coordination of Cooperation with OLAF [zákon č. 34/2023 Sb., o koordinaci spolupráce s Evropským úřadem pro boj proti podvodům], **was introduced to facilitate more effective cooperation with OLAF**. Due to its significance as a **procedural framework for mutual cooperation**, the statute is reproduced verbatim below.
- 40 The adoption process of the statute, along with the key changes introduced, was effectively summarised in the Evaluation of the Action Plan for the National Strategy on the Protection of the Financial Interests of the European Union for 2022 [*Vyhodnocení Akčního plánu k Národní strategii na ochranu finančních zájmů Evropské unie za rok 2022*]:



“The need to draft a ‘**statute on cooperation with OLAF**’ arose from the obligation to ensure proper application, enforcement and compliance with the amending Regulation of the European Parliament and of the Council (EU, Euratom) 2020/2223 of 23 December 2020, which amended Regulation (EU, Euratom) No 883/2013 [...]. **The regulation establishes a new requirement for Member States to provide OLAF with access to data from the Central Register of Accounts, safe deposit boxes and transaction records.** In the Czech Republic, no state administration body previously held the authority to fulfil these obligations. After multilateral negotiations, it was agreed that the Ministry of Finance, as the coordinating service for the fight against fraud, would be entrusted with this responsibility. The Ministry already has an established relationship with OLAF to a certain extent.

The draft law also ensures the application of the relevant provisions of the original Regulation (EU, Euratom) No 883/2013 of 11 September 2013 concerning investigations conducted by OLAF and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, which has not yet been fully implemented into Czech law.

The statute is proposed to come into effect on the first day of the second calendar month following the date of its publication in the Collection of Statutes, as the regulation to

⁴⁴⁶ Ibid.

which the Czech legal framework is being adapted entered into force on 17 January 2021.

During its first reading on 3 June 2022, the draft statute was referred to the budget committee of the Chamber of Deputies of the Parliament (hereinafter ‘PSP CR’) as the guarantor committee. At its 14th meeting, held on 22 June 2022, the committee recommended the draft for a second reading without amendments. At the 45th meeting of the PSP CR on 29 November 2022, the draft statute passed its second reading without amendments. Finally, at the 48th meeting of the PSP CR on 14 December 2022, the draft statute was approved in the third reading.”⁴⁴⁷

Since entering into effect on 1 April 2023, this statute clarifies relevant procedural aspects of cooperation with OLAF. However, this statute does not address all potential situations that may arise in the context of OLAF’s cooperation with national authorities. Such scenarios must be resolved through the application of specific Czech statutes (see Art 3 OLAF Regulation, Chapter 3.5 et seq.).

41

Section 1 Subject Matter⁴⁴⁸

(1) In accordance with the directly applicable regulation of the European Union, this Act regulates the coordination of cooperation with the European Anti-Fraud Office (OLAF).

(2) This Act does not apply to international cooperation:

(a) in criminal cases;

(b) in the administration of taxes, fees and other similar monetary payments as per the directly applicable regulation of the European Union.

42

⁴⁴⁷ See Evaluation of the Action Plan for the National Strategy on the Protection of the Financial Interests of the European Union for 2022, p. 18. Available at: https://www.mfcr.cz/assets/cs/media/2023-04-03_Vyhodnoceni-akcniho-planu-k-Narodni-strategii-na-ochranu-financnich-zajmu-EU-za-rok-2022.pdf. Accessed 31 March 2025.

⁴⁴⁸ § 1 Předmět úpravy

(1) Tento zákon upravuje v návaznosti na přímo použitelný předpis Evropské unie koordinaci spolupráce s Evropským úřadem pro boj proti podvodům.

(2) Tento zákon se nepoužije při mezinárodní spolupráci

a) v trestních věcech a

b) při správě daní, poplatků a jiných obdobných peněžitých plnění podle přímo použitelného předpisu Evropské unie.

Section 2 Definition of Certain Terms⁴⁴⁹

For the purposes of this Act:

- (a) “Investigation” refers to an OLAF investigation conducted under Regulation of the European Parliament and of the Council (EU, Euratom) No 883/2013;
- (b) “Fraud” refers to fraud, bribery, or other illegal actions damaging or threatening the financial interests of the EU or the European Atomic Energy Community, as defined in Art 2(3) of Regulation (EU, Euratom) No 883/2013;
- (c) “Requested Person” refers to:
 - 1. A bank;
 - 2. A foreign bank operating in the Czech Republic through a branch;
 - 3. Savings and credit cooperatives;
 - 4. Electronic money institutions, foreign electronic money institutions, small-scale electronic money issuers, payment institutions, foreign payment institutions and small-scale payment service providers, to which the Czech National Bank has assigned a payment system code;
 - 5. Postal licence holders expressly authorised to deliver monetary sums via postal order;
- (d) “Monetary Transaction” refers to:
 - 1. Payment transactions under the law governing payment systems;⁴⁵⁰
 - 2. Deposits or withdrawals from non-payment accounts, as per law governing payment systems or withdrawal of funds from this account;
 - 3. Payments made via cheques, bills of exchange, or traveller’s cheques;
 - 4. Payments made through postal orders under postal service law;

⁴⁴⁹ § 2 Vymezení některých pojmů

Pro účely tohoto zákona se rozumí

- a) vyšetřováním Evropského úřadu pro boj proti podvodům vyšetřování vedené podle nařízení Evropského parlamentu a Rady (EU, Euratom) č. 883/2013,
- b) podvodem podvod, úplatkářství nebo jiné protiprávní jednání poškozující nebo ohrožující finanční zájmy Evropské unie a Evropského společenství pro atomovou energii podle čl. 2 bodu 3 nařízení Evropského parlamentu a Rady (EU, Euratom) č. 883/2013,
- c) dožádanou osobou
 - 1. banka,
 - 2. zahraniční banka, která vykonává svou činnost na území České republiky prostřednictvím pobočky,
 - 3. spořitelní a úvěrní družstvo,
 - 4. instituce elektronických peněz, zahraniční instituce elektronických peněz, vydavatel elektronických peněz malého rozsahu, platební instituce, zahraniční platební instituce a poskytovatel platebních služeb malého rozsahu, kterým Česká národní banka přidělila kód platebního styku,
 - 5. držitel poštovní licence, jehož poštovní licence výslovně obsahuje službu dodání peněžní částky poštovním poukazem,
- d) peněžní transakcí
 - 1. platební transakce podle zákona upravujícího platební styk,
 - 2. vklad peněžních prostředků na jiný než platební účet podle zákona upravujícího platební styk nebo výběr peněžních prostředků z tohoto účtu,
 - 3. platba prováděná prostřednictvím šeků, směnek nebo cestovních šeků,
 - 4. platba prováděná prostřednictvím poštovních poukazů podle zákona upravujícího poštovní služby, nebo
 - 5. platba prováděná mezi dožádanými osobami na jejich vlastní účet.

⁴⁵⁰ This refers to the Act on Payment Systems [zákon č. 370/2017 Sb., o platebním styku].

5. Payments made between requested persons on their own account.

Section 3 Competent Authority⁴⁵¹

The Ministry of Finance is designated as the authority responsible for coordinating co-operation with OLAF as part of the Coordination Service for the fight against fraud, as defined in Regulation (EU, Euratom) No 883/2013 (hereinafter referred to as the “Coordination Service”).

Section 4 Powers of the Ministry of Finance within the Coordination Service⁴⁵²

The Ministry of Finance, as part of the Coordination Service:

- (a) Provides necessary assistance in OLAF investigations or activities to determine the occurrence of fraud.
- (b) Cooperates with other public administration authorities to seize the necessary documentation related to assistance provided to beneficiaries of EU funds or instruments, for the purposes of OLAF investigations or related activities aimed at establishing whether fraud has occurred.
- (c) Procures and forwards information available in the Central Register of Accounts and safe deposit boxes, as per the Act on the Central Register of Accounts, to OLAF for its investigative needs.
- (d)⁴⁵³ Obtains and provides records of monetary transactions from requested persons to OLAF for the purposes of its investigations.

⁴⁵¹ § 3 Příslušný orgán

Koordinaci spolupráce s Evropským úřadem pro boj proti podvodům zajišťuje v rámci výkonu koordinační služby pro boj proti podvodům podle nařízení Evropského parlamentu a Rady (EU, Euratom) č. 883/2013 (dále jen „koordinační služba“) Ministerstvo financí.

⁴⁵² § 4 Pravomoci Ministerstva financí v rámci výkonu koordinační služby

Ministerstvo financí v rámci výkonu koordinační služby

- a) poskytuje potřebnou součinnost při vyšetřování Evropského úřadu pro boj proti podvodům nebo jeho činnosti směřující ke zjištění, zda došlo k podvodu,
- b) pro potřeby vyšetřování Evropského úřadu pro boj proti podvodům nebo jeho činnosti směřující ke zjištění, zda došlo k podvodu, spolupracuje s dalšími orgány vykonávajícími působnost v oblasti veřejné správy na zajištění nezbytné dokumentace týkající se pomoci poskytnuté příjemci z fondů nebo nástrojů Evropské unie,
- c) opatřuje a předává pro potřeby vyšetřování Evropského úřadu pro boj proti podvodům informace dostupné v centrální evidenci účtů a bezpečnostních schránek podle zákona o centrální evidenci účtů,
- ⁴⁵³ d) opatřuje pro potřeby vyšetřování Evropského úřadu pro boj proti podvodům od dožádaných osob záznamy peněžních transakcí a předává je tomuto úřadu,
- e) předává dokumentaci podle písmene b) a dokumenty a informace, které se týkají boje proti podvodům, Evropskému úřadu pro boj proti podvodům,
- f) informuje Evropský úřad pro boj proti podvodům o přijatých opatřeních a o skutečnostech zjištěných na základě obdržených informací, kterými se Evropský úřad pro boj proti podvodům zabýval před zahájením vnějšího vyšetřování,
- g) informuje Evropský úřad pro boj proti podvodům o opatřeních přijatých na základě obdržených informací získaných Evropským úřadem pro boj proti podvodům při vnějším vyšetřování,
- h) je příslušným orgánem pro přijímání závěrečných zpráv a informací z vyšetřování Evropského úřadu pro boj proti podvodům, včetně příslušných doporučení,
- i) zasílá Evropskému úřadu pro boj proti podvodům na jeho žádost konečné rozhodnutí soudu, jakmile bude příslušné soudní řízení pravomocně ukončeno a konečné soudní rozhodnutí zveřejněno.

- (e) Transmits the documentation and information under (b), as well as other data related to the fight against fraud, to OLAF.
- (f) Informs OLAF of measures taken and facts established based on information received from OLAF, prior to the initiation of an external investigation.
- (g) Notifies OLAF of measures taken in response to information provided by OLAF during an external investigation.
- (h) Acts as the competent authority for receiving final reports and information from OLAF investigations, including any relevant recommendations.
- (i) Sends the final judicial decision to OLAF upon its request, as soon as the relevant court proceedings have concluded and the final decision has been published.

Section 5 Keeping Records of Monetary Transactions⁴⁵⁴

- (1) The Ministry of Finance, as part of the performance of the Coordination Service, obtains records of monetary transactions from the requested person pursuant to s. 4(d) based on a written request.
- (2) The requested person shall provide the Ministry of Finance with records of monetary transactions as part of the performance of the Coordination Service pursuant to s. 4(d), in electronic form, within 10 working days from the date of delivery of the request, unless the Ministry of Finance, as part of the Coordination Service, specifies a longer period.
- (3) Upon receiving a justified written request from the requested person no later than three working days before the expiry of the period specified in paragraph 2, the Ministry of Finance may reasonably extend this period, as part of the performance of the Coordination Service; while having regard to the scope and complexity of obtaining the required records of monetary transactions.

Section 6 Confidentiality⁴⁵⁵

- (1) An individual acting as an employee of the interested party, as well as members of the statutory or supervisory body of the interested party, is obliged to maintain confidentiality regarding any facts learned in the performance of activities undertaken in fulfilment of obligations under this Act.

⁴⁵⁴ § 5 Opatřování záznamů peněžních transakcí

- (1) Ministerstvo financí v rámci výkonu koordinační služby opatřuje od dožádané osoby záznamy peněžních transakcí podle § 4 písm. d) na základě písemné žádosti.
- (2) Dožádaná osoba poskytne Ministerstvu financí v rámci výkonu koordinační služby záznamy peněžních transakcí podle § 4 písm. d) v elektronické podobě ve lhůtě 10 pracovních dní ode dne doručení jeho žádosti, není-li Ministerstvem financí v rámci výkonu koordinační služby stanovena lhůta delší.
- (3) Na základě odůvodněné písemné žádosti dožádané osoby podané nejpozději 3 pracovní dny před skončením lhůty podle odstavce 2 může Ministerstvo financí v rámci výkonu koordinační služby tuto lhůtu přiměřeně prodloužit; přitom přihlédne k rozsahu a náročnosti získání požadovaných záznamů peněžních transakcí.

⁴⁵⁵ § 6 Mlčenlivost

(2)⁴⁵⁶ The obligation to maintain confidentiality does not extend to information that is publicly known.

(3) Publishing generalised information obtained during the performance of obligations under this Act, which does not identify the persons concerned, does not constitute a breach of the confidentiality obligation.

(4) The obligation to maintain confidentiality is not violated when a person performing state administration duties in the Ministry of Finance provides information as a part of the Coordination Service:

(a) to another individual performing similar state administration duties; or

(b) to an authorised person undertaking duties related to archival matters.

(5) The confidentiality obligation for the individual referred to in paragraph 1 continues to apply even after the person ceases to perform their duties under this Act or their function ends.

(6) Pursuant to the Act on Free Access to Information [zákon č. 106/1999 Sb., o svobodném přístupu k informacím], the Ministry of Finance will not disclose data under paragraph 4(c) and (d) that it provided for the purposes of investigations by the European Anti-Fraud Office.

Section 7 Processing of Personal Data

(1)⁴⁵⁷ To the extent necessary to facilitate cooperation with the European Anti-Fraud Office, the Ministry of Finance, as part of the Coordination Service, processes personal data obtained pursuant to a request by the European Anti-Fraud Office.

(2) Within the scope of the Coordination Service, the Ministry of Finance is obliged to delete the acquired personal data without undue delay once the purpose for which the

⁴⁵⁶ (1) Osoba v základním pracovněprávním vztahu k dožádané osobě a členové statutárního nebo kontrolního orgánu této dožádané osoby mají povinnost zachovávat mlčenlivost o skutečnostech, které se dozvěděli při výkonu činnosti v rámci plnění povinností podle tohoto zákona.

(2) Povinnost zachovávat mlčenlivost se nevztahuje na informace veřejně známé.

(3) Porušením povinnosti zachovávat mlčenlivost není zveřejnění zobecněných informací získaných při plnění povinností podle tohoto zákona, ze kterých nevyplývá, které osoby se týkají.

(4) O porušení povinnosti zachovávat mlčenlivost nejde, poskytne-li osoba vykonávající v Ministerstvu financí státní správu v rámci výkonu koordinační služby informace

a) jiné osobě vykonávající tento druh státní správy,

b) oprávněné osobě při plnění povinností ve věcech archivnictví.

(5) Povinnost osoby uvedené v odstavci 1 zachovávat mlčenlivost trvá i tehdy, přestane-li se tato osoba podílet na plnění povinností podle tohoto zákona nebo zanikne-li její funkce.

(6) Ministerstvo financí neposkytne podle zákona o svobodném přístupu k informacím údaje podle § 4 písm. c) a d), které opatřilo pro potřeby vyšetřování Evropského úřadu pro boj proti podvodům.

⁴⁵⁷ (1) V rozsahu nezbytném pro zajištění součinnosti vyžadované Evropským úřadem pro boj proti podvodům Ministerstvo financí v rámci výkonu koordinační služby zpracovává osobní údaje získané na základě žádosti Evropského úřadu pro boj proti podvodům.

(2) Ministerstvo financí v rámci výkonu koordinační služby je povinno zajistit výmaz získaných osobních údajů bez zbytečného odkladu poté, kdy bude účel, kterým je poskytnutí podpory ze strany Ministerstva financí v rámci výkonu koordinační služby na žádost Evropského úřadu pro boj proti podvodům a v jejích mezích, naplněn.

data was processed – namely, the provision of support requested by the European Anti-Fraud Office – has been fulfilled and within the limits of the Office’s request.

Section 8 Administrative Offences⁴⁵⁸

(1) A natural person referred to in s. 6(1) or (5) commits an offence by violating the obligation to maintain confidentiality as prescribed in s. 6.

(2) A requested person specified in s. 2(c)(4) or (5) commits an offence by failing to provide the Ministry of Finance with records of monetary transactions maintained pursuant to paragraph 5(1), in the manner or within the time limit laid down in s. 5(2) or (3).

(3) A monetary penalty of up to CZK 1,000,000 may be imposed for an offence under paragraph 1.

(4) A monetary penalty of up to CZK 2,000,000 may be imposed for an offence under paragraph 2.

(5) Proceedings regarding violations under paragraphs 1 and 2 shall be conducted by the Ministry of Finance.

Section 9 Effect⁴⁵⁹

This Act shall come into effect on the first day of the second calendar month following the date of its promulgation.

2.3. Authorities Cooperating with OLAF

- 43** Since the authorities involved in OLAF investigations naturally differ to some extent from those relevant to the EPPO, we provide below an overview of the national authorities and ministries one may encounter in this context, for example as authorities conducting the sector-specific administrative proceedings or reviewing their legality. Where necessary, relevant comments and clarifications are included.
- 44** For authorities that liaise with OLAF in relation to sector-specific offences, see further Article 8 of the EPPO Regulation. To summarise, this competence is divided between

⁴⁵⁸ **§ 8 Přestupky**

(1) Fyzická osoba podle § 6 odst. 1 nebo 5 se dopustí přestupku tím, že poruší povinnost zachovávat mlčenlivost podle § 6.

(2) Dožádaná osoba podle § 2 písm. c) bodu 4 nebo 5 se dopustí přestupku tím, že Ministerstvu financí neposkytne záznamy peněžních transakcí opatřované podle § 5 odst. 1 způsobem nebo ve lhůtě podle § 5 odst. 2 nebo 3.

(3) Za přestupek podle odstavce 1 lze uložit pokutu do 1000000 Kč.

(4) Za přestupek podle odstavce 2 lze uložit pokutu do 20000000 Kč.

(5) Přestupky podle odstavců 1 a 2 projednává Ministerstvo financí.

⁴⁵⁹ **§ 9 Účinnost**

Tento zákon nabývá účinnosti prvním dnem druhého kalendářního měsíce následujícího po dni jeho vyhlášení.

the Ministry of Finance, the Supreme Prosecutor's Office (see also the role of the National Headquarters Against Organised Crime of the Criminal Police and Investigation Service) and General Customs Directorate.

Responsibility in each case depends on several factors, including the type of management (direct or shared management), the nature of the suspected irregularity or fraud, and the budgetary aspect involved (expenditure or revenue).

Table 17: National Authorities Relevant for OLAF Investigations

Authority	Jurisdiction
Ministry of Finance (hereinafter referred to as "MF") with SharePoint AFCOS [<i>Ministerstvo financí ČR</i>]	Apart from SharePoint AFCOS, which is part of the AFCOS network, the Ministry of Finance is also relevant in administrative proceedings conducted within the tax administration or in matters of governance ("Control, Audit and Irregularities" [<i>Pracovní skupina „Transfery“</i>]). Both expenditure and revenue sides.
General Financial Directorate [<i>Generální finanční ředitelství</i>] - Appeals Financial Directorate - Local financial offices	Revenue side; administrative tax investigations.
Supreme Prosecutor's Office [<i>Nejvyšší státní zastupitelství</i>]	Involvement occurs only when a suspicion of a criminal offence arises during the investigation. For cooperation with the EPPO, see above Part B on EPPO Regulation.
National Headquarters Against Organised Crime of the Criminal Police and Investigation Service [<i>Národní centrála proti organizovanému zločinu SKPV</i>]	No function for OLAF unless a suspicion of a criminal offence arises during an investigation for cooperation with the EPPO, see above Part B on EPPO Regulation.
General Directorate of Customs [<i>Celní správa ČR</i>]	Responsible, for example, in cases involving export refunds on certain products.
Ministry of Labour and Social Affairs [<i>Ministerstvo práce a sociálních věcí</i>]	The ministry is responsible for matters relating to the European Social Fund. Expenditure side.

Ministry of Regional Development [<i>Ministerstvo pro místní rozvoj</i>]	The ministry is tasked with overseeing expenditure in the area of structural funds. Expenditure side. Please note that the former Regional Councils for the Cohesion Policy Implementation [<i>Regionální rady regionu soudržnosti</i>] have been disbanded in 2021 by Act No 251/2021 Coll., which amended the Regional Development Support Act [zákon č. 248/2000 Sb., o podpoře regionálního rozvoje].⁴⁶⁰ The amendment redefined competences in this area and emphasised the role of the ministry. Furthermore, since 2021, the law has designated a new authority within the government structure to manage and oversee the implementation of EU funds in the Czech Republic. This authority is referred to as the Funds Council of the European Union [<i>Rada pro fondy Evropské unie</i>].
Ministry of Transportation [<i>Ministerstvo dopravy ČR</i>]	This Ministry is responsible for duties arising under CFR Regulations, including obligations related to payment, public procurement contracts with clauses for repayment of overdue sums and similar matters. Expenditure side. In relation to specific sectoral obligations, the Ministry of the Interior, along with other ministries, participate in the

⁴⁶⁰ The amendment was justified by the Minister for Regional Development, Klára Dostálová, who argued that maintaining seven regional councils was economically inefficient when their functions could be fulfilled by a significantly smaller administrative structure. Previously, these councils served as governing bodies for the regional operational programmes, overseeing EU-funded projects, disbursing funds, and monitoring implementation during the 2007–2013 programming period. However, in the current programming period, funding is managed by other bodies, and the councils’ role has been largely reduced to ensuring the sustainability of past projects. As of 1 January 2022, all regional councils of cohesion regions were formally dissolved, with the Czech Republic designated as their legal successor. See <https://zemedelec.cz/cinnost-regionalnich-rad-regionu-soudržnosti-prevezme-mmr/>. Accessed 31 May 2024.

	system on both the expenditure and revenue sides, as well as in decision-making on remedies in national administrative proceedings [<i>rozkladové komise</i>].
Other ministries	In relation to specific sectoral obligations, the Ministry of the Interior, along with other ministries, participate in the system on both the expenditure and revenue sides, as well as in decision-making on remedies in national administrative proceedings [<i>rozkladové komise</i>].
Supreme Audit Office [<i>Nejvyšší kontrolní úřad (NKÚ)</i>]	The Supreme Audit Office is tasked with supervisory responsibilities.
Office for the Protection of Economic Competition [<i>Úřad pro ochranu hospodářské soutěže</i>]	The focus of this office is on public procurement, particularly in heavily financed projects. From the perspective of defence counsel, experience shows that proceedings and fines imposed by this office in cases of non-compliance with relevant public procurement rules are proving to be a more significant deterrent than criminal proceedings in the area of public procurement, though so far not so extensive as in other jurisdictions.

Source: The authors.

3. Article 3 External Investigation

3.1. Introductory Remarks	368
3.2. Renouncing the Applicable National Law (Paragraphs 2 and 4).....	370
3.3. Assistance Needed, Competent Authorities and Access to Information in the Member States (Paragraph 5).....	371
3.4. Resistance and the Role of National Administrative Law	371
3.5. National Statutes on On-the-Spot Checks: Customs Statutes.....	375
3.6. National Statutes on On-the-Spot Checks: VAT Statutes	376
3.6.1. Structure of the Statute	377
3.6.2. Tax Audit Proceedings	377
3.7. National Statutes on On-the-Spot Checks: Inspection Code	383
3.7.1. Structure of the Statute	383
3.7.2. Inspection Proceedings	384
3.8. National Statutes on On-the-Spot Checks: Structural Funds.....	390
3.8.1. Relevant Statutes and Information	390
3.8.2. The Financial Inspection Act	392
3.8.3. Protection of Information	398
3.8.4. Seizure of Digital Evidence and Bank Account Data	398
3.8.5. Tax Secrecy	402
3.9. Investigative Missions in Third Countries	403
3.10. Mutual Assistance and Cooperation	404

[...] 2. The Office shall ***carry out on-the-spot checks and inspections in accordance with this Regulation and, to the extent not covered by this Regulation, in accordance with Regulation (Euratom, EC) No. 2185/96.***

[...] 4. Where, in accordance with paragraph 3 of this Article, the ***economic operator concerned submits*** to an on-the-spot check and inspection authorised pursuant to this Regulation, Article 2(4) of Regulation (EC, Euratom) No. 2988/95, the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No. 2185/96 and Article 7(1) of Regulation (Euratom, EC) No. 2185/96 ***shall not apply insofar as those provisions require compliance with national law*** and are capable of restricting access to information and documentation by the Office to the same conditions as those that apply to national administrative inspectors.

5. At the request of the Office, the ***competent authority of the Member State*** concerned shall, without undue delay, provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2).

The ***Member State concerned shall ensure***, in accordance with Regulation (Euratom, EC) No. 2185/96, that the ***staff of the Office are allowed access to all information, documents and data relating to the matter under investigation which prove necessary***

in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that the staff are able to assume custody of documents or data to ensure that there is no danger of their disappearance. Where privately owned devices are used for work purposes, those devices may be subject to inspection by the Office. The Office shall subject such devices to inspection only under the same conditions and to the same extent that national control authorities are allowed to investigate privately owned devices and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

6. Where the staff of the Office find that an ***economic operator resists*** an on-the-spot check and inspection authorised pursuant to this Regulation, namely where the economic operator refuses to grant the Office the necessary access to its premises or any other areas used for business purposes, conceals information or prevents the conduct of any of the activities that the Office needs to perform in the course of an on-the-spot check and inspection, the ***competent authorities, including, where appropriate, law enforcement authorities of the Member State concerned shall afford the staff of the Office the necessary assistance so as to enable the Office to conduct its on-the-spot check and inspection effectively and without undue delay.***

Note for the Reader: This part stems from Regulation 2988/95, which is referenced by Art 3 OLAF Regulation and presented here for the sake of completeness:



Article 2(4) of Regulation (EC, Euratom) No. 2988/95

Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

The third subparagraph of Article 6(1) of Regulation (Euratom, EC) No. 2185/96

Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the Member State concerned.

Article 7(1) of Regulation (Euratom, EC) No. 2185/96

Commission inspectors shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned which are required for the proper conduct of the on-the-spot checks and inspections. They may avail themselves of the same inspection facilities as national administrative inspectors and in particular copy relevant documents.

On-the-spot checks and inspections may concern, in particular:

- professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements held by Economic Operators,
- computer data,

- production, packaging and dispatching systems and methods,
- physical checks as to the nature and quantity of goods or completed operations,
- the taking and checking of samples,
- the progress of works and investments for which financing has been provided, and the use made of completed investments,
- budgetary and accounting documents,
- the financial and technical implementation of subsidized projects.]

When providing assistance in accordance with this paragraph or with paragraph 5, the competent authorities of Member States ***shall act in accordance with national procedural rules applicable to the competent authority concerned. If such assistance requires authorisation from a judicial authority in accordance with national law***, such authorisation shall be applied for.

10. As part of its investigative function, the Office shall carry out the checks and inspections provided for in Article 9(1) of Regulation (EC, Euratom) No. 2988/95 and in the sectoral rules referred to in Article 9(2) of that Regulation in Member States and, ***in accordance with cooperation and mutual assistance agreements and any other legal instrument in force***, in third countries and on the premises of international organisations.

12. Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an external investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the competent authorities of the Member States concerned and, where necessary, the institutions, bodies, offices and agencies concerned.

Without prejudice to the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No. 2988/95, the competent authorities of the Member States concerned shall ensure that appropriate action is taken, in which the Office may take part, ***in accordance with national law***. Upon request, the competent authorities of the Member States concerned shall inform the Office of the action taken and of their findings on the basis of information referred to in the first subparagraph of this paragraph.

3.1. Introductory Remarks

- 1 On-the-spot checks [*kontrola na místě*] have been extensively discussed over the past decade.⁴⁶¹ This chapter focuses on the relevant national statutes applicable when OLAF operates on Czech territory, for example, conducting an on-the-spot check to assess customs irregularities affecting the Union's revenue side of the budget.

⁴⁶¹ See for example Bovend'eerdt 2018.

The objective of all inspections (under both Union and Czech law) is to verify and determine whether EU funds have been used for their intended purpose and in accordance with the conditions outlined in legal documents such as a contract, a decision, a grant agreement, a guideline, a Regulation, an agreement, or any other document establishing the applicable conditions.

The **Section for on-the-spot checks of the Czech Ministry of Industry and Trade** [Oddělení kontrol na místě Ministerstva průmyslu a obchodu] recently shared its views on the shortcomings of on-the-spot checks. It published its concerns, findings and observations online, particularly focusing on irregularities in the extensive **public procurement sector**, which receives significant funding:

“The most common problem that we observe during on-the-spot checks is that the **recipient of the grant does not have the complete project documentation** in its original and up-to-date form available at the place of implementation (e.g. employment contracts, lease agreements, procurement documentation, work contracts, supplier offers, handover protocol...). Additionally, the documents recorded in the MS2014+ system are not consistent with those submitted to the control group (e.g. changes to contact or responsible persons, company name...).

From the perspective of tenders and public contracts, we frequently observe that **grant recipients fail to properly document communication with potential participants** as part of additional information, or questions raised during site inspections are not published along with the relevant answers on the client’s profile. Moreover, unless absolutely necessary and justified by the contracting authority – for instance, due to compatibility requirements – it is not advisable to define the subject of performance in the procurement documentation and annexes by referencing specific names or brands. Doing so could lead to discrimination against suppliers and limit the pool of potential applicants for the tender or public contract. Contracting authorities also face challenges related to technical specifications. Instead of specifying exact values for required parameters, it is advisable to define minimum or maximum values, or provide a range within which the parameter is acceptable. Careful attention should also be given to the formulation of evaluation criteria, which must be clearly defined, specifying what will be assessed and in what specific units. Conflict of interest is another critical issue, as the contracting authority and supplier must not be economically connected entities. Compliance with the current version of the Rules for the Selection of Suppliers [Pravidla pro výběr dodavatelů] and the applicable version of the Public Procurement Act [zákon č. 134/2016 Sb., o zadávání veřejných zakázek], effective at the time of the procurement, is essential when acquiring goods, services, or construction works.

Regarding the **financial aspects of a project**, subsidy recipients often fail to maintain proper accounting for assets, income and expenses related to the project. This includes

neglecting the use of special analytical accounts, omitting project numbers on invoices, or failing to include all necessary data on bank account statements and expense documents (e.g. variable symbols or supplier account numbers). Additional issues include the misclassification of expenditure in approved budgets (e.g. investment versus non-investment expenditure, or machinery and equipment versus construction work), errors in the recalculation of eligible expenditure in foreign currencies, discrepancies between data on invoices and supporting documents and failure to pay invoices within the project deadlines. For projects that include budgeted items for salaries and insurance premiums, special care should be taken when completing the Statement of Work – Breakdown of Salary Costs and Vacations [*Výkaz práce – Rozpis mzdových nákladů a dovolené*]. The values entered must correspond to payroll records, statements of work, employment contracts and the information approved in the business plan. Errors often occur when gross salaries are reported, including bonuses and holiday compensation, or when incorrect calculations are made for part-time positions. Adherence to the wording of the Decision on the Provision of Subsidies and its annexes is always necessary.”⁴⁶²

- 5 This brief introduction has already emphasised that national law continues to govern the course of audits and inspections. Consequently, on-the-spot checks and inspections must always be interpreted in the context of the relevant national legal framework.
- 6 Due to the complexity of terminology at both national and international levels, the following chapters use the term **inspection** to cover a broad range of measures relevant to the OLAF Regulation. To ensure clarity and avoid confusion, the specific term **tax audit** is retained exclusively for tax-related matters.
- 7 *Nota bene:* In some areas, such as forestry, the State Agricultural Intervention Fund [*Státní zemědělský intervenční fond*] or Czech ministries have issued concise documents  for the general public and beneficiaries (e.g. measures within the framework of general forestry initiatives) to facilitate better comprehension of their rights and duties.⁴⁶³

3.2. Renouncing the Applicable National Law (Paragraphs 2 and 4)

- 8 National law is waived if the economic operator, beneficiary, grant recipient, or similar party agrees and submits to the Office’s investigation. In such cases, Union law subsequently applies in the scope provided therein.

⁴⁶² See https://www.mpo.cz/cz/podnikani/dotace-a-podpora-podnikani/optak-2021-2027/aktualni-informace/kontroly-na-miste_-nejcastejsi-chyby--272548/. Accessed 31 May 2024.

⁴⁶³ Available at: <https://bit.ly/4657XdY>. Accessed 31 May 2024. The purpose of this publication is to familiarise applicants with the inspection process and assist them in navigating the required documentation.

3.3. Assistance Needed, Competent Authorities and Access to Information in the Member States (Paragraph 5)

When Union law applies, OLAF may require assistance and information from national authorities in the Member States, such as managing authorities, inspecting bodies, customs and tax offices.

9

3.4. Resistance and the Role of National Administrative Law

If the economic operator, beneficiary, or grant recipient resists the actions of the Office, such behaviour impacts the applicability of the law. In its *Sigma Orionis* ruling, the GC held that national law applies in cases of resistance. This means that the investigation must comply with national legal standards applicable to similar investigations conducted domestically.⁴⁶⁴ Please refer to the relevant national statutes on inspections, as the applicability of general administrative procedure law may also be relevant.

10

While Czech law contains general rules governing administrative procedure, it also includes sector-specific statutes, such as those related to tax, customs, and financial control. The relationship between these legal frameworks and their roles in different types of investigations warrants closer examination.

11

The **administrative procedure** plays a central role in conducting inspections, setting out the rules for national authorities acting independently or in cooperation with OLAF. Therefore, when analysing the statutes relevant for OLAF, the **Czech Administrative Code** [zákon č. 500/2004 Sb., správní řád] must be considered. It serves as a *lex generalis* for all administrative proceedings (e.g. see s. 1(2) of the Act), unless a *lex specialis* directly **excludes** its application.

12

Special acts in the administrative area include the Inspection Code, Tax Code, Customs Act or the Financial Inspection Act. However, their relation to the *lex generalis* varies.

13

The **Inspection Code** generally follows the procedures set out in the Administrative Code:

14

Section 28 Relation to the Administrative Code⁴⁶⁵

Unless otherwise provided by law, inspections are conducted in accordance with the Administrative Code.

15

⁴⁶⁴ GC, *Sigma Orionis SA v European Commission*, Judgment of the General Court (First Chamber) of 3 May 2018, ECLI:EU:T:2018:245, paragraphs 78 et seq. As per paragraph 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.”

⁴⁶⁵ § 28 Vztah ke správnímu řádu

Nestanoví-li zákon jinak, postupuje se při kontrole podle správního řádu.

- 16 The **Tax Code** entirely excludes the application of the Administrative Code, as provided by s. 262 of the Tax Code, which states that **the Administrative Code does not apply to tax administration**. Consequently, the general provisions of the Administrative Code are entirely inapplicable to tax matters which fall within the scope of “tax administration”. However, this retains a certain degree of ambiguity, as it implies that in areas governed by the Tax Code, which do not fall within tax administration (but, for instance, precede it), the Administrative Code may still apply to varying degrees.

Section 262 Relation to the Administrative Code⁴⁶⁶

The Administrative Code does not apply to tax administration.

- 17 In contrast, the **Customs Act** partially **limits the use of the Administrative Code**. Specifically, s. 3 of the Customs Act outlines the following provisions:

18 Section 3 Application of Other Statutes⁴⁶⁷

(1) In exercising powers under this Act, the Tax Code shall apply, unless otherwise provided for in a directly applicable provision of the European Union or in this Act.

(2) The Administrative Code shall apply in the cases such as:

(a) proceedings concerning administrative offences;

(b) the establishment of a customs territory;

(c) the declaration of a part of the territory of the Czech Republic as a free zone, the determination of conditions for activities within the free zone, and the procedure for issuing an opinion on an application for permission for a project concerning immovable property located within the free zone;

(d) proceedings in respect of authorisations under this Act or directly applicable European Union legislation, except guarantor authorisations and authorisations relating to the use of security;

⁴⁶⁶ § 262 Vztah ke správnímu řádu

Při správě daní se správní řád nepoužije.

⁴⁶⁷ § 3 Použití jiných právních předpisů

(1) Při výkonu působnosti podle tohoto zákona se postupuje podle daňového řádu, nestanoví-li přímo použitelný předpis Evropské unie nebo tento zákon jinak.

(2) Podle správního řádu se postupuje v případech

a) řízení o přestupcích,

b) stanovení celního prostoru,

c) prohlášení části území České republiky za svobodné pásmo, stanovení podmínek výkonu činnosti ve svobodném pásmu a řízení ve věci vyjádření k žádosti o povolení záměru týkajícího se nemovité věci, která je ve svobodném pásmu,

d) řízení ve věci povolení podle tohoto zákona nebo přímo použitelného předpisu Evropské unie s výjimkou povolení ručitele a povolení vztahujícího se k užívání jistoty,

e) řízení ve věci osvědčení schváleného hospodářského subjektu a osvědčení o úlovku při dovozu nebo zpětném vývozu produktů mořského rybolovu podle přímo použitelného předpisu Evropské unie,

f) schválení osoby k používání přepravy na podkladě karnetu TIR nebo vyloučení osoby z tohoto používání.

(3) Stanoví-li zákon upravující daň z přidané hodnoty nebo zákon upravující spotřební daně, že pro správu daní se použijí ustanovení o správě cel, použijí se v souvislosti se správou těchto daní také ustanovení přímo použitelného předpisu Evropské unie a tohoto zákona o povoleních souvisejících se správou cel.

- (e) procedures for approved economic operator certificates and catch certificates for the import or re-export of marine fishery products under directly applicable European Union legislation;
 - (f) authorisation of a person to use the TIR Carnet for transport or the exclusion of a person from such use.
- (3) Where statutes on value added tax or excise duties declares that the provisions on customs administration apply to the administration of taxes, the provisions of a directly applicable EU regulation and the Customs Act concerning customs administration authorisations shall similarly apply to the administration of those taxes.

Finally, the **Financial Inspection Act** mandates the application of the provisions of the Inspection Code (s. 13 FIA), which, in turn, requires adherence to the Administrative Code, as previously noted. Both, of course, in the scope stated therein. It is worth noting the limitations set out in s. 13a FIA.

19

Section 13 Rules for the Performance of On-site Public Administration Inspection⁴⁶⁸

20

- (1) The relationship between inspecting authorities and inspected persons during on-site public administration inspection is governed by the Inspection Code, except where this Act provides otherwise.
- (2) Employees of the inspection authority may, during on-site public administration inspection conducted at the premises of a legal or natural person who is an applicant for or recipient of public financial support, exercise inspection powers under this Act and the Inspection Code only to the extent necessary to achieve the purpose of such inspection.
- (3) If irregularities are identified in documents concerning the supply of goods or services funded from public expenditure or financial support, the inspection authority shall follow the procedure outlined in paragraph 1 to perform appropriate inspections on the obliged party.

⁴⁶⁸ § 13 Pravidla pro výkon veřejnosprávní kontroly na místě

- (1) Vzájemné vztahy mezi kontrolními orgány a kontrolovanými osobami při výkonu veřejnosprávní kontroly na místě se řídí kontrolním řádem, nestanoví-li tento zákon jinak.
- (2) Zaměstnanci kontrolního orgánu mohou při veřejnosprávní kontrole vykonávané na místě u právnické nebo fyzické osoby, která je žadatelem o veřejnou finanční podporu nebo jejím příjemcem, používat kontrolní oprávnění podle tohoto zákona a podle kontrolního řádu pouze v rozsahu nezbytném ke splnění účelu této kontroly.
- (3) Zjistí-li kontrolní orgán u kontrolované osoby nesrovnalosti v dokladech o dodávkách zboží nebo služeb hrazených z veřejných výdajů nebo z veřejné finanční podpory, použije při kontrole u osoby povinné spolupůsobit při výkonu této kontroly přiměřeně postup podle odstavce 1.
- (4) Pokud se osoba povinná spolupůsobit ke kontrole podle odstavce 3 již předem ve smlouvě o dodávkách zboží nebo služeb nezavázala, kontrolní orgán je oprávněn vyžádat si doklady v rozsahu nezbytném k ověření příslušné operace.
- (5) Při výkonu veřejnosprávní kontroly je kontrolní orgán oprávněn si vyžádat od kontrolované účetní jednotky nebo od jiného kontrolního orgánu účetní záznamy též prostřednictvím centrálního systému účetních informací státu, anebo si vyžádat účetní záznamy od správce centrálního systému účetních informací státu, za podmínek stanovených zákonem o účetnictví.

(4) Where the obliged party has not pre-committed, through contract, to providing necessary documents, the inspection authority is entitled to request these documents to verify the relevant operations.

(5) During a public administration inspection, the inspection authority may request accounting records from the audited accounting unit or other inspecting authorities via the central state accounting information system or directly from its administrator, as stipulated by the Accounting Act.

Section 13a Special Provisions on Procedural Rules for the Performance of an Inspection⁴⁶⁹

(1) Inspections conducted under directly applicable European Union regulations must take into account internationally recognised standards. The following provisions are excluded: s. 9(f), s. 10 (1)(c) and (d), ss. 12–19, ss. 21, 23–27 of the Inspection Code and ss. 18–21 of this Act.

(2) The employee of the inspection authority who conducts the inspection is required to draft a report detailing the findings. If deficiencies are identified, the report must also include recommendations to improve the financial control system, mitigate risks and address these deficiencies.

(3) The inspection authority employee is obliged to inform the person subject to the inspection of the findings and the proposed content of the inspection report. A written draft of the report must be provided to the inspected person, who is entitled to submit a written response. This response becomes an integral part of the final inspection report. The deadline for submitting a response is set by the inspection authority employee but must not be less than five days unless otherwise agreed.

(4) Upon completing the inspection, the inspection authority employee must deliver the final inspection report to the inspected person. The inspected person is then obliged to

⁴⁶⁹ § 13a Zvláštní ustanovení o procesních pravidlech pro výkon auditu

(1) Při výkonu auditu podle přímo použitelných předpisů Evropských společenství se přihlídně k mezinárodně uznávaným auditorským standardům; nepoužijí se § 9 písm. f), § 10 odst. 1 písm. c) a d), § 12 až 19, § 21, § 23 až 27 kontrolního řádu a § 18 až 21 tohoto zákona.

(2) Zaměstnanec kontrolního orgánu, který audit vykonal, vyhotoví o tomto auditu zprávu. Součástí zprávy o auditu vykonaného u orgánu veřejné správy je v případě zjištěných nedostatků též doporučení ke zdokonalení systému finanční kontroly, k předcházení nebo zmírnění rizik a k nápravě těchto nedostatků.

(3) Zaměstnanec kontrolního orgánu, který audit vykonává, je povinen seznámit osobu, u které je tento audit vykonáván, se získanými poznatky a s navrhovaným obsahem zprávy o auditu a poskytnout jí písemné vyhotovení návrhu této zprávy. Osoba, u které je audit vykonáván, je oprávněna zaujmout k návrhu této zprávy písemné stanovisko. Toto stanovisko je součástí zprávy o auditu. Lhůtu k zaujetí stanoviska stanoví zaměstnanec kontrolního orgánu, který audit vykonává. Tato lhůta nesmí být kratší než 5 dní, pokud nebyla dohodnuta lhůta jiná.

(4) Zaměstnanec kontrolního orgánu, který audit vykonal, je povinen zprávu o auditu předat osobě, u které byl tento audit vykonán. Kontrolovaná osoba je povinna informovat orgán veřejné správy, jehož zaměstnanec audit vykonal, o přijetí a plnění opatření k nápravě zjištěných nedostatků.

(5) Audit podle přímo použitelných předpisů Evropských společenství je ukončen dnem doručení zprávy o auditu příslušnému vedoucímu orgánu veřejné správy, který tento audit vykonal.

notify the public administration body responsible for the inspection regarding the adoption and implementation of measures aimed at rectifying the identified deficiencies.

(5) An inspection conducted under the directly applicable regulations of the European Communities is deemed complete on the date the inspection report is delivered to the head of the public administration body responsible for conducting the inspection.

Nota bene: All authorities, particularly seconded national experts to OLAF and AFCOS, must ascertain whether, and to what extent, the Administrative Code applies when providing information to OLAF.

3.5. National Statutes on On-the-Spot Checks: Customs Statutes

With regard to **customs**, relevant statutes are:

- Customs Act [zákon č. 242/2016 Sb., celní zákon];
- Act on the Customs Administration of the Czech Republic [zákon č. 17/2012 Sb., o Celní správě České republiky].

These acts complement each other by dividing competencies between **customs procedures and regulations** (Customs Act) and the **institutional and operational structure of the customs administration** (Act on the Customs Administration).

Please note that **directly applicable European legislation** is particularly relevant in this sector when conducting investigations.

For **rules on investigations** carried out in customs matters, see s. 3 Customs Act (see above Chapter 3.5), which mandates the application of the Tax Code and the Administrative Code, in the scope in which directly applicable EU legislation does not take precedence.

Customs investigations primarily focus **on customs duties collected by Czech Customs on behalf of the Union budget**. Any deficiencies during the collection phase can result in significant harm to the budget. Investigative powers in this area are established under the Czech Customs Act.

In certain instances, the seizure of customs duties is initiated at the request of OLAF. In such cases, OLAF directly contacts Czech officials, requesting the conduct of investigations related to cases managed by an OLAF investigation unit in Brussels. The following case exemplifies this collaborative *modus operandi* and highlights subsequent judicial scrutiny of the investigative process.

	Constitutional Court of the Czech Republic, Decision No IV. ÚS 3433/15 of 30 August 2016
<i>Rapporteur: Jaromír Jirsa</i> “The duty was reassessed following a subsequent customs inspection carried out at the initiative of OLAF. It was revealed that the complainant had imported approximately 5 million non-refillable (disposable) pocket flint lighters, falsely declaring Malaysia as their country of origin to reduce duty, when they actually originated from China. The Supreme Administrative Court, in its judgment of 17 September 2015, No 9 Afs 128/2015-60, dismissed the appellant’s cassation appeal against the regional court’s judgment. The Constitutional Court found that the administrative courts had addressed the defence in a constitutionally compliant manner, thoroughly responding to claims concerning the requirements of customs control and subsequent proceedings. The courts also repeatedly reviewed compliance with dual-instance administrative proceedings and supporting evidence from OLAF and the Malaysian Ministry of Foreign Trade and Industry (MITI). For these reasons, the Constitutional Court rejected the complaint without an oral hearing or the presence of the parties, pursuant to s. 43(2)(a) of the Act on the Constitutional Court, as a manifestly unfounded proposal.”	

Source: Ústavní soud České republiky, translated by the authors.

3.6. National Statutes on On-the-Spot Checks: VAT Statutes

- 27 With regard to **VAT matters**, relevant statutes are:
- Value Added Tax Act [zákon č. 235/2004 Sb., o dani z přidané hodnoty];
 - Tax Code [zákon č. 280/2009 Sb., daňový řád].
- 28 Apart from the procedure to remove doubts [*postup k odstranění pochybností*, s. 90], the Tax Code also governs tax audit proceedings, which, in relation to VAT as a potential subject of EU investigations, include relevant provisions for inspections conducted in this area.
- 29 Please note that in the Czech Republic, neither national administrative tax authorities nor OLAF have the authority to conduct criminal tax investigations. Such matters lie exclusively within the jurisdiction of authorities involved in criminal proceedings, namely the public prosecutor, courts, and law enforcement agencies. In certain cases, the EPPO is competent to assume jurisdiction.

If criminal suspicion arises, it should be noted that the Czech “Tax Cobra” [*Daňová kobra*] – a specialised criminal investigation body composed of the Czech Police and the Tax Administration – may assume competence in cases of VAT evasion and similar offences (see above Art 28 EPPO Regulation, Chapter 4). In such instances, the case may also fall within the competence of the EPPO (see Art 12e OLAF Regulation). 30

3.6.1. Structure of the Statute

The Tax Code governs tax audit proceedings [*daňová kontrola*] primarily in ss. 85–88a. These measures should not be conflated with the provisions set out in the preceding chapters, beginning with s. 70, which encompass either **general procedural rules** or **preliminary investigative measures** [*vyhledávací činnost*], the latter of which formally precedes the **inspection procedure**. While primary attention should be directed to Title VI (ss. 70–107), particularly ss. 85 et seq., readers must remain cognisant of the complexity and occasional opacity of Czech tax statutes and are advised to consult relevant national commentaries for further clarification.⁴⁷⁰ 31

Excerpt from the Tax Code No 280/2009 Coll.

TITLE VI – PROCEEDINGS AND OTHER PROCEDURES (ss. 70–107)

- Part 1 – General Provisions on Tax Proceedings and Related Procedures (ss. 70–77)
 - Submissions (ss. 70–77): Covers procedural requirements, including submission defects (s. 74), language requirements (s. 76), and official disqualifications (s. 77).
- Part 2 – Investigative Measures (ss. 78–84)
 - Preliminary Investigations (s. 78), Requests for Explanations (s. 79), and On-Site Investigations (ss. 80–84).
- Part 3 – Inspection Procedures (ss. 85–90)
 - Tax Audits (ss. 85–88a) and Procedures for Resolving Doubts (ss. 89–90).
- Part 4 – Tax Determination and Assessment Proceedings (ss. 91–107)



3.6.2. Tax Audit Proceedings

Given the intricate nature of tax proceedings, it is imperative to first outline certain fundamental principles before delving into the specific investigative measures that will be examined in the subsequent chapter. 33

Under s. 85 Tax Code, the subject of a tax audit encompasses **tax obligations, taxpayer declarations, and other circumstances relevant for the correct determination and assessment of tax liability**. The tax authority may conduct an audit at the taxpayer’s premises or any location deemed appropriate for the audit’s purpose. The audit’s scope is determined upon initiation and may be subsequently modified (s. 85(3)). Notably, 34

⁴⁷⁰ See Rozehnal 2024 or Lichnovský et al. 2024.

multiple tax proceedings concerning the same taxpayer may be consolidated into a single tax audit (s. 85(4)).

- 35 A repeated tax audit is permissible only in limited circumstances (see s. 85a).
- 36 The **rights and obligations of taxpayers** during a tax audit are stipulated in s. 86. Taxpayers are obliged to facilitate the audit by providing necessary documentation and allowing tax authorities access to relevant records. They also have the right to be present during discussions with their employees or other involved parties; submit evidence and propose additional evidentiary measures and challenge doubts raised by the tax authority regarding their tax declarations.
- 37 In turn, the tax authority must respect **procedural fairness and due process**, ensuring that taxpayers have the opportunity to present their arguments and supporting evidence. The principle of **legitimate expectation** dictates that the tax authority must conduct audits in a transparent and predictable manner, without exceeding its prescribed scope.
- 38 A tax audit **formally commences** upon the delivery of a **notification of initiation** [*oznámení o zahájení daňové kontroly*] to the taxpayer (s. 87(1)). This notification must specify the **subject and scope** of the audit. Notably, tax authorities are required to start the examination process **without undue delay** after issuing the notification (s. 87(2)).
- 39 Upon completion of the audit, the tax authority must document its findings in a **preliminary audit report** [*výsledek kontrolního zjištění*, s. 88]. This document includes an assessment of the collected evidence and, where applicable, an indication that a tax reassessment decision will follow. Taxpayers are afforded an opportunity to respond to these findings within a reasonable timeframe.
- 40 If the preliminary report suggests a modification of the taxpayer's declared obligations, the tax authority must consider the taxpayer's objections before finalising its conclusions. The audit officially concludes with the delivery of the notification on the conclusion of the tax audit along with a **tax audit report** [*zpráva o daňové kontrole*, s. 88a], which consolidates the final audit findings and includes:
- A reference to the **initial notification** and any modifications to the audit's scope.
 - A definitive assessment of the tax obligation, including an evaluation of evidence.
 - The tax authority's response to any taxpayer objections.
- 41 If the audit results in an **additional tax assessment**, a tax determination decision is issued concurrently with the audit report. In cases where no irregularities are identified, the taxpayer receives only a **notification of audit closure**.

Section 85⁴⁷¹

(1) A tax audit concerns tax obligations, taxpayer statements, or other relevant circumstances necessary for the correct determination and assessment of tax within a single tax proceeding.

(2) A tax audit is conducted at the taxpayer's premises or any other location deemed appropriate for the audit's purpose.

(3) The tax authority examines the subject of the tax audit within a defined scope, which may be expanded or reduced during the audit by delivering a notification of a change in scope.

(4) A tax audit may be conducted jointly for multiple tax proceedings related to the same taxpayer.

(5) Notifications issued in connection with a tax audit do not require justification and cannot be challenged through a procedural remedy.

Section 85a⁴⁷²

(1) A tax audit concerning matters that have already been examined within a defined scope may only be repeated if:

(a) the tax authority discovers new facts or evidence that could not have been presented in the original audit without fault of the tax authority and which creates doubts about the accuracy, reliability, or completeness of the previously assessed tax or taxpayer's statements – in this case, the repeated audit is limited to the scope of the newly discovered facts or evidence; or

(b)⁴⁷³ the taxpayer modifies previous statements; in this case, the repeated audit is limited to the extent of the change.

⁴⁷¹ § 85

(1) Předmětem daňové kontroly jsou daňové povinnosti, tvrzení daňového subjektu nebo jiné okolnosti rozhodné pro správné zjištění a stanovení daně vztahující se k jednomu daňovému řízení.

(2) Daňová kontrola se provádí u daňového subjektu nebo na místě, kde je to vzhledem k účelu kontroly nejvhodnější.

(3) Správce daně předmět daňové kontroly prověřuje ve vymezeném rozsahu. Rozsah daňové kontroly lze v jejím průběhu rozšířit nebo zúžit doručením oznámení o změně rozsahu daňové kontroly.

(4) Daňovou kontrolu lze provádět společně pro více daňových řízení týkajících se jednoho daňového subjektu.

(5) Oznámení doručované v souvislosti s daňovou kontrolou neobsahuje odůvodnění a nelze proti němu uplatnit opravné prostředky.

⁴⁷² § 85a

(1) Daňovou kontrolu, která se týká skutečností, které již byly v souladu s vymezeným rozsahem kontrolovány, je možné opakovat pouze tehdy, pokud

a) správce daně zjistí nové skutečnosti nebo důkazy, které nemohly být bez zavinění správce daně uplatněny v původní daňové kontrole a které zakládají pochybnosti o správnosti, průkaznosti nebo úplnosti dosud stanovené daně nebo tvrzení daňového subjektu; takto lze daňovou kontrolu opakovat pouze v rozsahu, který odpovídá nově zjištěným skutečnostem nebo důkazům, nebo

⁴⁷³ b) daňový subjekt učiní úkon, kterým mění svá dosavadní tvrzení; takto lze daňovou kontrolu opakovat pouze v rozsahu, který odpovídá změně dosavadního tvrzení daňového subjektu.

(2) Správce daně uvede důvody pro opakování daňové kontroly v oznámení o zahájení nebo o změně rozsahu daňové kontroly.

(2) The tax authority must state the reasons for a repeated tax audit in the notification of initiation or modification of the audit scope.

Section 86⁴⁷⁴

(1) The taxpayer must enable the tax authority to conduct the tax audit.

(2) During a tax audit, the taxpayer has the right to:

(a) be present at discussions involving their employees or other persons carrying out their activities;

(b) submit evidence or request the examination of evidence that is not in their possession;

(c) refute doubts raised by the tax authority.

(3) The taxpayer must fulfil obligations under s. 82 and further:

(a) provide a suitable place and conditions for conducting the tax audit;

(b) provide necessary information about their organisational structure, work responsibilities, powers of employees, and the location of accounting records and other documents (this does not apply to non-entrepreneurial individuals);

(c) submit evidence supporting their statements;

(d) allow discussions with any employee or other person performing activities on their behalf;

(e) not conceal evidence that is in their possession or known to exist elsewhere.

(4) The tax authority, while conducting the tax audit, also has powers granted under ss. 80 to 84.

Section 87

(1)⁴⁷⁵ A tax audit is initiated upon the delivery of a notification of the commencement of a tax audit, which defines the subject and scope of the tax audit.

⁴⁷⁴ § 86

(1) Daňový subjekt je povinen umožnit správci daně provedení daňové kontroly.

(2) Daňový subjekt má v rámci daňové kontroly právo

a) být přítomen jednání se svými zaměstnanci nebo dalšími osobami, které vykonávají jeho činnosti,

b) předkládat důkazní prostředky nebo navrhnout provedení důkazních prostředků, které on sám nemá k dispozici,

c) vyvracet pochybnosti vyjádřené správcem daně.

(3) Daňový subjekt v rámci daňové kontroly plní povinnosti podle § 82 a dále je povinen

a) zajistit vhodné místo a podmínky k provádění daňové kontroly,

b) poskytnout nezbytné informace o vlastní organizační struktuře, o pracovní náplni jednotlivých útvarů, o oprávněních jednotlivých zaměstnanců nebo jiných osob zajišťujících jeho činnost a o uložení účetních záznamů a jiných informací; to neplatí pro nepodnikající fyzické osoby,

c) předložit důkazní prostředky prokazující jeho tvrzení,

d) umožnit jednání s kterýmkoliv svým zaměstnancem nebo jinou osobou, která vykonává jeho činnosti,

e) nezatajovat důkazní prostředky, které má k dispozici, nebo o nichž je mu známo, kde se nacházejí.

(4) Správce daně má při provádění daňové kontroly rovněž pravomoci podle § 80 až 84.

⁴⁷⁵ § 87

(2) The tax administrator shall, either at the time of commencement of the tax audit or without undue delay thereafter, begin to ascertain tax obligations, examine the taxpayer's declarations, or verify other circumstances relevant to the correct determination and assessment of tax.

(3) If the tax administrator fails to begin ascertaining tax obligations, examining taxpayer declarations, or verifying other relevant circumstances under the conditions set out in paragraph 2, the effect of the commencement of the tax audit on the limitation period for tax assessment shall only arise on the date on which such examination or verification actually begins.

(4) If a tax audit is initiated without a prior request for the submission of a tax return, despite the existence of grounds for issuing such a request, this fact shall not affect the legal effects of the audit's commencement. The taxpayer shall not be required to pay a penalty interest on the amount of tax assessed as a result of such an audit.

(5) If, during the course of the tax audit, territorial jurisdiction changes, the tax administrator who initiated the audit may complete it.

Section 88⁴⁷⁶

(1) The tax authority prepares a preliminary audit report, including an evaluation of the collected evidence.

(2) If the preliminary report suggests a decision to assess tax, the tax authority must inform the taxpayer and provide a reasonable period for comments.

(1) Daňová kontrola je zahájena doručením oznámení o zahájení daňové kontroly, ve kterém je vymezen předmět a rozsah daňové kontroly.

(2) Správce daně začne spolu se zahájením daňové kontroly, nebo bez zbytečného odkladu po tomto zahájení zjišťovat daňové povinnosti nebo prověřovat tvrzení daňového subjektu nebo jiné okolnosti rozhodné pro správné zjištění a stanovení daně.

(3) Pokud správce daně nezačne zjišťovat daňové povinnosti nebo prověřovat tvrzení daňového subjektu nebo jiné okolnosti rozhodné pro správné zjištění a stanovení daně za podmínek podle odstavce 2, účinek zahájení daňové kontroly na běh lhůty pro stanovení daně nastane až dnem, kdy k započetí takového zjišťování nebo prověřování dojde.

(4) Dojde-li k zahájení daňové kontroly bez předchozí výzvy k podání daňového tvrzení, ačkoli byl naplněn důvod pro vydání této výzvy, nemá tato skutečnost vliv na účinky tohoto zahájení. Daňovému subjektu nevzniká povinnost uhradit penále z částky daně stanovené na základě takto zahájené daňové kontroly.

(5) Dojde-li v průběhu daňové kontroly ke změně místní příslušnosti, může daňovou kontrolu dokončit správce daně, který ji zahájil.

⁴⁷⁶ § 88

(1) Správce daně na základě provedené kontrolní činnosti sepiše dosavadní výsledek kontrolního zjištění, jehož součástí je hodnocení dosud zjištěných důkazů.

(2) Pokud z dosavadního výsledku kontrolního zjištění vyplývá, že na jeho základě dojde k vydání rozhodnutí o stanovení daně, správce daně sdělí daňovému subjektu tento výsledek a současně mu stanoví přiměřenou lhůtu pro případné vyjádření.

(3)⁴⁷⁷ If the findings are communicated during a meeting, the taxpayer may waive the right to a response period.

(4) The taxpayer has the right to:

(a) challenge the preliminary findings of the audit;

(b) request additional examination of the findings.

5. If the taxpayer's comments lead to substantial changes in the audit findings, the process follows the rules outlined above.

Section 88a⁴⁷⁸

(1) A tax audit is concluded upon the delivery of a notification of the conclusion of the tax audit, which shall be accompanied by a tax audit report signed by the responsible official person.

(2) The tax audit report shall include:

(a) a reference to the notification of the commencement of the tax audit, or where applicable, a reference to a notification of a change in the audit's scope;

(b) the final audit findings, including:

1. an assessment of the gathered evidence;

2. the tax administrator's position on the taxpayer's response to the preliminary audit finding.

(3) If the final audit findings do not indicate that a decision on tax assessment will be issued, the tax determination or additional assessment proceedings shall be deemed concluded upon the delivery of the notification of the conclusion of the tax audit, unless the proceedings were initiated by the submission of a tax return.

⁴⁷⁷ (3) V případě, kdy je dosavadní výsledek kontrolního zjištění sdělován při jednání s daňovým subjektem, správce daně lhůtu pro případné vyjádření nestanoví, pokud daňový subjekt v rámci tohoto jednání prohlásí, že stanovení lhůty nepožaduje.

(4) Daňový subjekt je v rámci vyjádření k dosavadnímu výsledku kontrolního zjištění oprávněn zejména

a) vznést výhradu k dosavadnímu výsledku kontrolního zjištění,

b) podat návrh na doplnění dosavadního výsledku kontrolního zjištění.

(5) Dojde-li na základě vyjádření daňového subjektu k dosavadnímu výsledku kontrolního zjištění k podstatné změně tohoto výsledku, postupuje se podle odstavců 1 až 4.

⁴⁷⁸ § 88a

(1) Daňová kontrola je ukončena doručením oznámení o ukončení daňové kontroly, k němuž je přiložena zpráva o daňové kontrole podepsaná úřední osobou.

(2) Zpráva o daňové kontrole obsahuje

a) odkaz na oznámení o zahájení daňové kontroly, popřípadě oznámení o změně rozsahu daňové kontroly, a

b) konečný výsledek kontrolního zjištění, včetně

1. hodnocení zjištěných důkazů,

2. stanoviska správce daně k vyjádření daňového subjektu k výsledku dosavadního kontrolního zjištění.

(3) Pokud z konečného výsledku kontrolního zjištění nevyplyvá, že v dané věci dojde k vydání rozhodnutí o stanovení daně, je vyměřovací nebo doměřovací řízení ukončeno doručením oznámení o ukončení daňové kontroly, nejedná-li se o řízení, které bylo zahájeno podáním daňového tvrzení.

(4) Dojde-li ke stanovení daně výlučně na základě výsledku daňové kontroly, může správce daně doručit rozhodnutí o stanovení daně spolu s oznámením o ukončení daňové kontroly.

(4) Where the tax assessment is based exclusively on the outcome of the tax audit, the tax administrator may issue the tax assessment decision concurrently with the notification of the conclusion of the tax audit.

3.7. National Statutes on On-the-Spot Checks: Inspection Code

As will be discussed below, particularly in relation to structural funds and the Financial Inspection Act, the Czech Republic features a **general statute on inspections**, which is then referenced in sector-specific statutes. This statute is the Inspection Code [zákon č. 255/2012 Sb., kontrolní řád].

The relationship between the Administrative Code and *leges speciales* has already been mentioned above (see above Chapter 3.5). Please note that while the Inspection Code sets out certain specific rules, it, in turn, refers back to the Administrative Code (see s. 28 of the Inspection Code, cited verbatim above at **Fehler! Verweisquelle konnte nicht gefunden werden.**).

3.7.1. Structure of the Statute

The **procedure of inspection** outlined in Title III (ss. 4–19) is particularly significant for OLAF, as its national partners rely on these provisions to delineate the scope of their inspections in specified subject matters. The most relevant provisions concerning investigative powers are discussed further below. The Act is structured as follows:

PART ONE – INSPECTION CODE (ss. 1–30)

TITLE I – GENERAL PROVISIONS (ss. 1–2)

- s. 1 – Applicability of the Statute
- s. 2 – Inspection

TITLE II – PRE-INSPECTION ACTIONS (s. 3)

- s. 3 – Acts Preceding the Inspection

TITLE III – INSPECTION PROCEEDINGS (ss. 4–19)

- s. 4 – Authorisation for Inspection
- s. 5 – Commencement of Inspection
- s. 6 – Invited Persons
- s. 7 – Access to Land, Buildings and Other Premises
- s. 8 – Other Rights of the Inspector
- s. 9 – Obligations of the Inspector
- s. 10 – Rights and Obligations of the Inspected Person and Obligated Person
- s. 11 – Collected Samples
- s. 12 – Inspection Protocol
- s. 13 – Objections
- s. 14 – Handling of Objections
- s. 15 – Offences of Natural Persons, Legal Persons and Entrepreneurial Natural Persons
- s. 17 – Common Provisions on Administrative Offences

- s. 18 – Termination of Inspection
- s. 19 – Oversight of State Administration Performance

TITLE IV – COMMON PROVISIONS (ss. 20–28)

- s. 20 – Duty of Confidentiality
- s. 21 – Correction of Inaccuracies and Further Investigation
- s. 22 – Special Provisions on Accessing the File
- s. 23 – Inspection Costs
- s. 24 – Transfer of Inspection Execution to a Superior Administrative Authority
- s. 25 – Cooperation of Inspection Authorities
- s. 26 – Publication of Information about Inspections
- s. 27 – Inspections Planning
- s. 28 – Relation to the Administrative Code

3.7.2. Inspection Proceedings

- 46 The **authorisation for inspection** is a fundamental requirement for carrying out an inspection under the Inspection Code. The inspection authority [*kontrolní orgán*] designates an authorised inspector [*kontrolující*], who must be a natural person empowered by the head of the inspecting body or a delegated superior officer. The authorisation may take the form of either a written mandate specific to an individual inspection or an inspector's card, if prescribed by other statutes. In cases where multiple inspectors conduct an inspection, a lead inspector is appointed. The authorisation serves as proof of legitimacy, enabling the inspected entity to verify the inspector's authority. Furthermore, the inspected entity has the right to challenge the inspector's impartiality, and such objections are addressed by the superior authority overseeing the inspection.
- 47 The **commencement of inspection** occurs officially through one of three methods: (a) the presentation of the inspection authorisation to the inspected entity or another relevant party present at the site, (b) the delivery of a formal notification of inspection, including a list of inspectors and their authorisation, or (c) the execution of a preliminary inspection act that directly precedes the presentation of authorisation. If the inspection begins in the absence of the inspected entity, they must be notified subsequently. The initiation of an inspection establishes legal rights and obligations for both the inspectors and the inspected entity, and from this point onwards, compliance with inspection duties can be enforced. The commencement procedure is crucial for ensuring legal certainty and protecting the rights of all parties involved.
- 48 **Section 4 Authorisation for Inspection**⁴⁷⁹
- (1) Inspections are conducted by a natural person authorised by the inspection authority (hereinafter referred to as the “inspector”).

⁴⁷⁹ § 4 Pověření ke kontrole

(1) Kontrolu vykonává fyzická osoba, kterou kontrolní orgán k tomu pověřil (dále jen „kontrolující“).

(2)⁴⁸⁰ Authorisation to conduct an inspection is issued by the head of the inspection authority or a person designated by the head of the inspection authority (hereinafter referred to as the “superior officer of the inspector”). If multiple inspectors are involved in a single inspection, the superior officer shall appoint one as the head of the inspection team.

(3) Authorisation to inspect may take the form of:

- (a) a written authorisation for an individual inspection; or
- (b) a licence, where required by another legal regulation.

Section 5 Commencement of Inspection⁴⁸¹

(1) The inspection authority initiates an inspection *ex officio*.

(2) The inspection begins with the first inspecting act, which may include:

- (a) presenting the authorisation for inspection to the inspected person or another relevant party involved with the inspected person, such as those who supplied or delivered goods, performed work, provided services, or otherwise participated in the inspected person’s activities (hereinafter referred to as the “obliged person”), present at the inspection site;
- (b) delivering a notification of the initiation of the inspection to the inspected person, which must include the mandate to inspect and a list of inspectors; or
- (c) performing the first inspection action immediately prior to presenting the authorisation for inspection to the inspected person or obliged person present at the site, if such preliminary action is necessary for the performance of the inspection.

(3) If the inspection is initiated pursuant to paragraph 2(a) or (c) without the presence of the inspected person, the inspector shall subsequently inform the inspected person about the commencement of the inspection.

⁴⁸⁰ (2) Pověření ke kontrole vydává vedoucí kontrolního orgánu, anebo osoba k tomu pověřená vedoucím kontrolního orgánu (dále jen „nadřízená osoba kontrolujícího“). Je-li při jednotlivé kontrole kontrolujících více, určí nadřízená osoba kontrolujícího jednoho z nich vedoucím kontrolní skupiny.

(3) Pověření ke kontrole má formu

- a) písemného pověření k jednotlivé kontrole, nebo
- b) průkazu, stanoví-li tak jiný právní předpis.

⁴⁸¹ § 5 Zahájení kontroly

(1) Kontrolní orgán zahajuje kontrolu z moci úřední.

(2) Kontrola je zahájena prvním kontrolním úkonem, jímž je

a) předložení pověření ke kontrole kontrolované osobě nebo jiné osobě, která kontrolované osobě dodává nebo dodala zboží nebo ho od ní odebrala či odebírá, koná nebo konala pro ni práce, anebo jí poskytuje nebo poskytovala služby nebo její služby využívala či využívá, případně se na této činnosti podílí nebo podílela (dále jen „povinná osoba“), jež je přítomna na místě kontroly,

b) doručení oznámení o zahájení kontroly kontrolované osobě; součástí oznámení musí být pověření ke kontrole, anebo seznam kontrolujících, nebo

c) první z kontrolních úkonů bezprostředně předcházejících předložení pověření ke kontrole kontrolované osobě nebo povinné osobě, jež je přítomna na místě kontroly, pokud je provedení takových kontrolních úkonů k výkonu kontroly třeba.

(3) Je-li kontrola zahájena podle odstavce 2 písm. a) nebo c) bez přítomnosti kontrolované osoby, informuje kontrolující kontrolovanou osobu o zahájení kontroly dodatečně.

- 49 The statute further includes provisions delineating **rights and obligations of the inspector**, so as to ensure the legality of inspections conducted under its scope.
- 50 A crucial aspect of the Czech Inspection Code is the inspector's **authority to enter premises** (s. 7), which ensures compliance while balancing constitutional protections. Inspectors may access buildings, vehicles, land, and other premises used or owned by the inspected entity, if necessary for the inspection. However, entry into private residences is restricted unless they are used for business or economic activities, or if verification of such use is required and no alternative means exist. Property owners must grant access under these conditions. While prior notice is not mandatory, inspectors should provide it when possible, ensuring a balance between regulatory enforcement and individual rights.
- 51 Inspectors may further (s. 8) verify **identities, conduct test purchases, collect samples, and request documents, and also seize originals in justified cases**. They may also **record audio-visual materials** and, where necessary, use the **technical equipment of the inspected entity**.
- 52 These rights are balanced with **obligations** (s. 9): inspectors must substantiate findings with evidence, respect rights, and allow inspected entities to be present unless it would hinder the process. The requirement to present inspection authorisation provides legal certainty, enabling entities to verify legitimacy and challenge irregularities. These obligations ensure inspections remain proportionate, balancing regulatory objectives with the rights of those subject to inspection.

53 **Section 7 Access to Land, Buildings and Other Premises⁴⁸²**

In connection with the performance of an inspection, an inspector is authorised to access buildings, means of transport, land and other premises, except for dwellings owned or used by the inspected person, or otherwise directly connected to the performance and subject matter of the inspection, where such is necessary for the performance of the inspection. Access to a dwelling is permitted only if the dwelling is used for business or other economic activity, or in instances where it is necessary to remove doubts as to whether the dwelling is being used for such purposes and where the objective of the inspection cannot otherwise be achieved. The owners or users of these premises are obliged to grant the inspector entry.

⁴⁸² § 7 Vstup na pozemky, do staveb a jiných prostor

Kontrolující je v souvislosti s výkonem kontroly oprávněn vstupovat do staveb, dopravních prostředků, na pozemky a do dalších prostor s výjimkou obydlí, jež vlastní nebo užívá kontrolovaná osoba anebo jinak přímo souvisí s výkonem a předmětem kontroly, je-li to nezbytné k výkonu kontroly. Do obydlí je kontrolující oprávněn vstoupit jen tehdy, je-li obydlí užíváno k podnikání nebo provozování jiné hospodářské činnosti nebo v případě, kdy se mají prostřednictvím kontroly odstranit pochybnosti o tom, zda je obydlí užíváno k těmto účelům a nelze-li dosáhnout splnění účelu kontroly jinak. Vlastníci nebo uživatelé těchto prostor jsou povinni kontrolujícímu vstup umožnit.

Section 8 Other Rights of the Inspector⁴⁸³

In connection with the performance of the inspection, the inspector is further authorised to:

- (a) Request proof of identity from a natural person present at the inspection location, provided the individual performs tasks for the inspected person or may contribute to achieving the purpose of the inspection.
- (b) Conduct control purchases, collect samples, carry out necessary measurements, monitoring, searches and tests.
- (c) Request the provision of data, documents and items related to the subject of the inspection or the activities of the inspected person (hereinafter referred to as “documents”); in justified cases, the inspector may require original documents.
- (d) Create video or audio recordings.
- (e) Use the technical means of the inspected person to the extent necessary for the execution of the inspection, subject to prior discussion with the inspected person.
- (f) Require additional cooperation from the inspected person and any other obliged persons necessary for the performance of the inspection.

Section 9 Obligations of the Inspector⁴⁸⁴

In connection with the execution of inspection, the inspector is obliged to:

- (a) Ascertain the factual state to the extent necessary to achieve the purpose of the inspection and, depending on the nature of the inspection, substantiate the inspection findings with the required documentation.

⁴⁸³ § 8 Další práva kontrolujícího

Kontrolující je v souvislosti s výkonem kontroly dále oprávněn

- a) požadovat prokázání totožnosti fyzické osoby, jež je přítomna na místě kontroly, jde-li o osobu, která plní úkoly kontrolované osoby, nebo osobu, která může přispět ke splnění účelu kontroly,
- b) provádět kontrolní nákupy, odebírat vzorky, provádět potřebná měření, sledování, prohlídky a zkoušky,
- c) požadovat poskytnutí údajů, dokumentů a věcí vztahujících se k předmětu kontroly nebo k činnosti kontrolované osoby (dále jen „podklady“); v odůvodněných případech může kontrolující zajišťovat originální podklady,
- d) pořizovat obrazové nebo zvukové záznamy
- e) v míře nezbytné pro průběh kontroly užívat technických prostředků kontrolované osoby, a to po předchozím projednání s kontrolovanou osobou,
- f) vyžadovat od kontrolované osoby a povinné osoby další součinnost potřebnou k výkonu kontroly.

⁴⁸⁴ § 9 Povinnosti kontrolujícího

Kontrolující je v souvislosti s výkonem kontroly povinen

- a) zjistit stav věci v rozsahu nezbytném pro dosažení účelu kontroly a v závislosti na povaze kontroly doložit kontrolní zjištění potřebnými podklady,
- b) šetřit práva a oprávněné zájmy kontrolované osoby, povinné osoby a třetí osoby,
- c) předložit kontrolované osobě nebo povinné osobě pověření ke kontrole, a požádá-li o to kontrolovaná osoba nebo povinná osoba, též další dokument, který dokládá, že se jedná o osobu uvedenou v pověření ke kontrole,
- d) vydat potvrzení o zajištěných originálních podkladech, a pomínou-li důvody jejich zajištění, neprodleně je vrátit,
- e) umožnit kontrolované osobě účastnit se kontrolních úkonů při výkonu kontroly na místě, nebrání-li to splnění účelu nebo provedení kontroly,
- f) vyhotovit protokol o kontrole a doručit jeho stejnopis kontrolované osobě.

- (b) Respect the rights and legitimate interests of the inspected person, the obliged person, and third parties.
- (c) Present the authorisation for inspection to the inspected person or the obliged person and, upon request, provide an additional document verifying the identity of the person named in the authorisation for inspection.
- (d) Issue a confirmation of seized original documents and return them without delay once the reasons for their seizure cease to exist.
- (e) Allow the inspected person to participate in inspection actions carried out on-site, provided this does not hinder the fulfilment of the purpose of the inspection or its proper execution.
- (f) Prepare an inspection protocol and deliver a copy to the inspected entity.

54 The Inspection Code also delineates **rights and obligations** of the **inspected person** (s. 10). They are **entitled to demand** that inspectors present their authorisation and supporting documentation verifying their identity and role in the inspection. This serves as a safeguard against unauthorised inspections and ensures transparency. Additionally, the inspected person may challenge the impartiality of an inspector or an accompanying person, a right mirroring procedural protections in administrative and judicial proceedings. They are also entitled to review the inspection report and submit objections to its findings. At the same time, the statute obliges the inspected person in order to facilitate an effective inspection process. They must provide necessary conditions for the inspection, including granting access to required premises, documents, and technical resources. They are also obliged to cooperate with inspectors and submit a written report on rectifying identified deficiencies if requested. In cases where an obliged person – a third party linked to the inspected person – holds relevant information or resources, they must provide necessary cooperation if such assistance cannot be obtained from the inspected entity. Failure to comply with these obligations may lead to administrative sanctions.

55 **Section 10 Rights and Obligations of the Inspected Person and the Obligated Person**⁴⁸⁵

- (1) The inspected person has the right to:
 - (a) request the inspector to present authorisation for the inspection and additional documentation confirming their identity as the individual authorised in the inspection;
 - (b) raise objections regarding the impartiality of the inspector or any invited person;
 - (c) review the content of the inspection protocol;

⁴⁸⁵ § 10 Práva a povinnosti kontrolované osoby a povinné osoby

(1) Kontrolovaná osoba je oprávněna

a) požadovat po kontrolujícím předložení pověření ke kontrole a dalšího dokumentu, který dokládá, že se jedná o osobu uvedenou v pověření ke kontrole,

b) namítat podjatost kontrolujícího nebo přizvané osoby,

- (d)⁴⁸⁶ raise objections against the findings recorded in the inspection protocol.
- (2) The inspected person is required to create suitable conditions for the performance of the inspection, to enable the inspector to exercise their statutory powers, to provide the necessary cooperation during the inspection and to submit a written report within the period specified by the inspector on the measures taken to eliminate or prevent deficiencies identified during the inspection, if requested by the inspector.
- (3) The obliged person is required to provide the inspector with the necessary cooperation for conducting the inspection if the inspected person is unable to ensure such cooperation.

The Inspection Code also mandates the issuance of an inspection protocol:

56

Section 12 Inspection Protocol

57

- (1) The inspection protocol shall document facts pertaining to the performed inspection and must include at a minimum:
- (a) the identification of the inspection authority and the inspector;
 - (b) the legal provisions granting the authority to conduct the inspection;
 - (c) the identification of any invited person, along with the reason for their invitation;
 - (d) the identification of the inspected person;
 - (e) the designation of the subject matter of the inspection;
 - (f) a description of the inspection action that initiated the inspection and the date on which this action was performed;
 - (g) the final inspection action preceding the preparation of the inspection protocol and the day on which this act was carried out;
 - (h) the findings, specifying the determined state of affairs, any identified deficiencies and the legal provisions that were violated, along with a reference to the documents forming the basis of these findings;
 - (i) instructions on the right to object to the findings outlined in the inspection protocol, including the timeframe for submitting objections and the authority to which they should be addressed;
 - (j) the date of the issuance of the inspection protocol, and
 - (k) the inspector's signature.
- (2) The inspection protocol must be prepared within 30 days of the final act related to the inspection, or within 60 days in cases deemed particularly complex.

⁴⁸⁶ c) seznámit se s obsahem protokolu o kontrole,

d) podávat námitky proti kontrolním zjištěním uvedeným v protokolu o kontrole.

(2) Kontrolovaná osoba je povinna vytvořit podmínky pro výkon kontroly, umožnit kontrolujícímu výkon jeho oprávnění stanovených tímto zákonem a poskytovat k tomu potřebnou součinnost a podat ve lhůtě určené kontrolujícím písemnou zprávu o odstranění nebo prevenci nedostatků zjištěných kontrolou, pokud o to kontrolující požádá.

(3) Povinná osoba je povinna poskytnout kontrolujícímu součinnost potřebnou k výkonu kontroly, nelze-li tuto součinnost zajistit prostřednictvím kontrolované osoby.

(3) A copy of the inspection protocol shall be delivered to the inspected person by the inspection authority.

58 Lastly, the **inspection is concluded** under conditions set out in s. 18 Inspection Code. The Czech Inspection Code differentiates between the **material and formal termination of an inspection, with the latter being legally significant**.⁴⁸⁷ While an inspection is practically concluded once the final inspection act is performed, it is formally terminated when certain legal conditions are met. The Code outlines three primary scenarios for termination (see below). These provisions ensure procedural certainty for all parties involved, marking the point at which the rights and obligations linked to the inspection **cease to apply**. However, the termination of the inspection **does not preclude subsequent administrative proceedings, particularly in cases where violations were identified during the inspection process**.

59 Section 18 Termination of Inspection⁴⁸⁸

An inspection is considered terminated under one of the following conditions:

- (a) Expiration of the objection period without any objections being submitted or if the inspected person expressly waives their right to file objections.
- (b) The date on which the resolution of objections is delivered to the inspected person.
- (c) The date on which the objections are referred to the competent administrative authority for resolution, as specified in s. 14(3).

3.8. National Statutes on On-the-Spot Checks: Structural Funds

60 The distribution of EU Structural Funds is governed by a combination of national administrative laws and directly applicable EU regulations. **Administrative assessments** typically precede fund disbursement to ensure compliance with EU and national spending rules, as well as financial obligations. An **administrative act**, which finally grants a subsidy, is usually based on **national administrative law** in combination with Union law or implemented Union law relating to EU Structural Funds. Instances of **irregularities in fund administration** can escalate into criminal investigations (see below Art 12a OLAF Regulation).

3.8.1. Relevant Statutes and Information

61 With regard to structural funds, relevant statutes are:

- Financial Inspection Act [zákon č. 320/2001 Sb., o finanční kontrole]

⁴⁸⁷ Vetešník 2021, p. 219.

⁴⁸⁸ § 18 Ukončení kontroly

Kontrola je ukončena

- a) marným uplynutím lhůty pro podání námitek nebo vzdáním se práva podat námitky,
- b) dnem doručení vyřízení námitek kontrolované osobě, nebo
- c) dnem, ve kterém byly námitky předány k vyřízení správnímu orgánu (§ 14 odst. 3).

- Inspection Code [zákon č. 255/2012 Sb., kontrolní řád]
- Act on Agriculture [zákon č. 252/1997 Sb., o zemědělství]
- Act on Regions [zákon č. 129/2000 Sb., o krajích]
- Act on the Support of Research, Experimental Development and Innovation [zákon č. 130/2002 Sb., o podpoře výzkumu a vývoje]
- Decree on the Central Registration of Subsidies [vyhláška č. 286/2007 Sb., o centrální evidenci dotací]
- Resolution of the Government of the Czech Republic No 756 of 11 July 2007, on the proposal for amendments to the legal regulations governing public budgets to ensure greater transparency in the provision of subsidies and other transfers in order to reduce corruption;⁴⁸⁹
- Resolution of the Government of the Czech Republic No 671 of 12 September 2012, on the centralisation of audits at the Ministry of Finance, altering the audit system for funds drawn from structural funds, the Cohesion Fund and the European Fisheries Fund;⁴⁹⁰
- Methodological Instruction on Financial Flows of Programmes Co-financed from the European Structural Funds, the Cohesion Fund and the European Maritime and Fisheries Fund for the 2014–2020 Programming Period.⁴⁹¹ The consolidated version includes amendments introduced by Methodological Guidelines Nos 1 to 5.

Several websites are operated by the Czech government to **facilitate access to EU funding and provide information** regarding the application and funding procedures for any EU-related policies. These can provide relevant insights into mapping the Czech funding environment. The platforms offer access to the established procedures:

- **EU Grant Portal:** grant.cz.
- **Portal of the European Structural and Investment Funds in the Czech Republic:** <https://www.dotaceeu.cz/cs/uvod>
- **Ministry of Finance, Division 4703 (Division 47):** The AFCOS is the central contact point of the Czech Republic [*Ministerstvo financí ČR*, oddělení 4703, Centrální kontaktní bod AFCOS]

The official website provides information on the procedures for applying for EU fund-

⁴⁸⁹ Usnesení vlády České republiky ze dne 11. července 2007, č. 756.

⁴⁹⁰ Usnesení vlády České republiky ze dne 12. září 2012, č. 671.

⁴⁹¹ Metodický pokyn finančních toků programů spolufinancovaných z ESF, FS a ENRF 2014 – 2020 (s účinností od 1. 11. 2018). Available at: <https://www.mfcr.cz/cs/zahranici-a-eu/hospodareni-eu/metodicka-podpora-profondy-eu/2018/metodicky-pokyn-financnich-toku-programu-32694>. Accessed 31 May 2024.

ing, alongside statistics, analyses, and an overview of structural funds distributed, including release reports on major projects and their outcomes.⁴⁹²

- 64 If OLAF requires information from national authorities regarding subsidies or EU funding irregularities, it can use the contact options provided on these platforms.

 *Nota bene:* The official website outlines multiple contact methods for such inquiries, with this being the primary:

National Coordination Authority⁴⁹³

Staroměstské náměstí 6

110 15 Praha 1

Tel.: +420 224 861 111 & E-mail: nok@mmr.cz

Web: www.dotaceEU.cz.

3.8.2. The Financial Inspection Act

- 65 The Czech Financial Inspection Act of 2001 (hereinafter referred to as “FIA”) governs the management of both state and EU funds within the administrative and public sectors. It grants authorities the power to conduct administrative proceedings and inspections in the scope defined under s. 1 FIA, which collectively form a set of processes as defined in s. 3 FIA.
- 66 In accordance with s. 4 FIA, financial inspection seeks to protect public funds against risks, irregularities and other deficiencies arising from breaches of statutes, wasteful or ineffective use of funds, or criminal activity. Section 5 FIA further specifies that the heads of relevant national administrative bodies are responsible for organising measures to protect funds.
- 67 While proceedings according to this statute are, to a significant extent, governed by the Inspection Code pursuant to s. 13(1) FIA, the broader procedural framework, including its applicability to economic operators, necessitates a thorough understanding of both jurisdictional scope and procedural reach.
- 68 Accordingly, relevant provisions on this matter are introduced below; and are commented on throughout.

69 Section 1 Subject Matter of Regulation

(1)⁴⁹⁴ This Act defines the organisation and scope of financial inspection carried out between public administration authorities, between public administration authorities and

⁴⁹² See [https://www.dotaceeu.cz/en/statistiky-a-analyzy/seznam-operaci-\(prijemcu\)](https://www.dotaceeu.cz/en/statistiky-a-analyzy/seznam-operaci-(prijemcu)). Accessed 31 May 2024. Occasionally, Summary of Evaluations is published as well (2020, 2022). See for example this link: https://www.dotaceeu.cz/getmedia/ad138829-b7fa-471a-8117-3968eb18e71b/Summary_of_evaluations_2022.pdf.aspx?ext=.pdf. Accessed 31 May 2024.

⁴⁹³ Cf. <https://dotaceeu.cz/cs/kontakty/kontakty>. Accessed 31 March 2025.

⁴⁹⁴ § 1 Předmět úpravy

applicants or recipients of public financial support, as well as within public administration authorities. It establishes the subject, main objectives, and principles of financial inspection conducted under this Act and special statutes, where such statutes so provide.

(2) The provisions of this Act also apply to the inspection of state enterprises conducted by the ministry acting on behalf of the state as the founding authority, in accordance with a special legal regulation.

(3) The provisions of this Act do not apply to inspection carried out by the Supreme Audit Office, inspection over the management of assets of a special nature, or the review of the financial management of higher-level and lower-level local authorities under special statutes. Furthermore, they do not apply to the inspection of legal persons where the state or higher-level and lower-level local authorities act as the founding authority, except in cases concerning the inspection of public financial support provided under this Act or a special legal regulation.

Section 3 Financial Inspection⁴⁹⁵

(1) Financial inspection, as provided under this Act, forms part of the financial management system ensuring the effective management of public funds. It comprises:

(a) a system of financial inspection conducted by inspecting authorities pursuant to ss. 7–11;

(b) a system of financial inspection carried out under international agreements pursuant to s. 24;

(c) an internal control system within public administration bodies as pursuant to ss. 25–31.

(2) The system under paragraph 1(a) encompasses financial inspection of matters essential to the management of public funds, particularly concerning public expenditures, including public financial support for inspected persons. This oversight is conducted prior to the allocation of funds, during their use and subsequently after their utilisation.

(1) Tento zákon vymezuje uspořádání a rozsah finanční kontroly vykonávané mezi orgány veřejné správy, mezi orgány veřejné správy a žadateli nebo příjemci veřejné finanční podpory a uvnitř orgánů veřejné správy. Stanoví předmět, hlavní cíle a zásady finanční kontroly vykonávané podle tohoto zákona a podle zvláštních právních předpisů, pokud tak tyto předpisy stanoví.

(2) Ustanovení tohoto zákona se vztahují i na kontrolu státního podniku vykonávanou ministerstvem, které plní jménem státu funkci jeho zakladatele podle zvláštního právního předpisu.

(3) Ustanovení tohoto zákona se nevztahují na kontrolu vykonávanou Nejvyšším kontrolním úřadem na kontrolu hospodaření s majetkem zvláštního charakteru a na přezkoumávání hospodaření územních samosprávných celků podle zvláštních právních předpisů a dále na kontrolu právnických osob, k nimž stát nebo územní samosprávné celky plní funkci zakladatele podle zvláštních právních předpisů, s výjimkou kontroly poskytované veřejné finanční podpory podle tohoto zákona a podle zvláštního právního předpisu.

⁴⁹⁵ § 3 Finanční kontrola

(1) Finanční kontrola vykonávaná podle tohoto zákona je součástí systému finančního řízení zabezpečujícího hospodaření s veřejnými prostředky. Tvoří ji

a) systém finanční kontroly vykonávané kontrolními orgány podle § 7 až 11,

b) systém finanční kontroly vykonávané podle mezinárodních smluv podle § 24,

c) vnitřní kontrolní systém v orgánech veřejné správy podle § 25 až 31.

It⁴⁹⁶ also includes inspections in line with directly applicable regulations of the European Communities (hereinafter referred to as “public inspection”).

(3) The system under paragraph 1(b) involves financial inspection of foreign funds carried out by international organisations in accordance with binding international treaties to which the Czech Republic is a party.

(4) The system under paragraph 1(c) consists of:

(a) financial inspection undertaken by responsible senior employees within the framework of the internal management of public administration bodies, covering the preparation of operations before their approval, continuous monitoring of operations until their final settlement and accounting and subsequent verification of selected operations during the evaluation of results and correctness of management (hereinafter referred to as “management inspection”);

(b) review and evaluation of the adequacy and effectiveness of management inspection, conducted in an organisationally separate and functionally independent manner, including verification of the accuracy of selected operations (hereinafter referred to as “internal audit”).

70 More pertinent for officials of OLAF and AFCOS is s. 6 FIA:

71 Section 6 Inspection Methods and Procedures⁴⁹⁷

(1) Financial inspection employs the following methods in particular:

(a) determining the actual state of the management of public funds and comparing it with relevant documentation;

(b)⁴⁹⁸ monitoring the correctness of procedures in the management of public funds;

⁴⁹⁶ (2) Systém podle odstavce 1 písm. a) zahrnuje finanční kontrolu skutečností rozhodných pro hospodaření s veřejnými prostředky zejména při vynakládání veřejných výdajů včetně veřejné finanční podpory u kontrolovaných osob, a to před jejich poskytnutím, v průběhu jejich použití a následně po jejich použití, včetně auditu podle přímo použitelných předpisů Evropských společenství (dále jen „veřejnosprávní kontrola“).

(3) Systém podle odstavce 1 písm. b) zahrnuje finanční kontrolu zahraničních prostředků vykonávanou mezinárodními organizacemi podle vyhlášených mezinárodních smluv, kterými je Česká republika vázána.

(4) Systém podle odstavce 1 písm. c) zahrnuje

a) finanční kontrolu zajišťovanou odpovědnými vedoucími zaměstnanci jako součást vnitřního řízení orgánu veřejné správy při přípravě operací před jejich schválením, při průběžném sledování uskutečňovaných operací až do jejich konečného vypořádání a vyúčtování a následném prověření vybraných operací v rámci hodnocení dosažených výsledků a správnosti hospodaření (dále jen „řídící kontrola“),

b) organizačně oddělené a funkčně nezávislé přezkoumávání a vyhodnocování přiměřenosti a účinnosti řídicí kontroly, včetně prověřování správnosti vybraných operací, (dále jen „interní audit“).

⁴⁹⁷ § 6 Kontrolní metody a kontrolní postupy

(1) Při výkonu finanční kontroly se používají zejména tyto kontrolní metody:

a) zjištění skutečného stavu hospodaření s veřejnými prostředky a jeho porovnání s příslušnou dokumentací,

⁴⁹⁸ b) sledování správnosti postupů při hospodaření s veřejnými prostředky,

c) šetření a ověřování skutečností týkajících se operací,

d) kontrolní výpočty,

e) analýza údajů ve finančních výkazech nebo jiných informačních systémech a vyhodnocení jejich vzájemných vztahů.

(2) Při výkonu finanční kontroly se uplatňují zejména tyto kontrolní postupy:

- (c) investigating and verifying facts related to operations;
 - (d) performing control calculations;
 - (e) analysing data from financial statements or other information systems and evaluating their interrelationships.
- (2) The following inspection procedures are specifically applied during the performance of financial inspection:
- (a) **approval procedures**, which ensure the verification of documents related to operations being prepared and suspend such operations in cases where deficiencies are detected, until they are rectified;
 - (b) **operational procedures**, which ensure the complete and accurate execution of operations up to their final settlement and accounting, incorporating inspection techniques for examining documentation and compiling financial, accounting and statistical reports, returns and statements;
 - (c) **evaluation procedures**, which ensure the assessment of data on completed operations stored in designated information systems and contained in financial, accounting and statistical statements, returns and reports. These procedures include comparing data with approved budgets and evaluating their impact on overall financial performance;
 - (d) **audit procedures**, which ensure the verification of the correctness of selected operations, along with functionally and organisationally independent evaluations of the adequacy and effectiveness of financial inspections implemented within the management system.
- (3)⁴⁹⁹ Inspection methods and procedures also encompass audit methods and procedures designed to fulfil the requirements of directly applicable European Communities regulations.
- (4) Further details regarding inspection methods and procedures shall be provided by the implementing statutes.

- a) schvalovací postupy, které zajišťují prověření podkladů připravovaných operací a které tyto operace v případech zjištění nedostatků pozastaví až do doby jejich odstranění,
- b) operační postupy, které zajišťují úplný a přesný průběh operací až do jejich konečného vypořádání a vyúčtování a které zahrnují i kontrolní techniky při prověřování jejich dokumentace a sestavování účetních, jiných finančních a statistických výkazů, hlášení a zpráv,
- c) hodnotící postupy, které zajišťují posouzení údajů o provedených operacích ukládaných v zavedených informačních systémech a obsažených v účetních, jiných finančních a statistických výkazech, hlášeních a zprávách, dále jejich porovnání se schválenými rozpočty a vyhodnocení jejich důsledků na celkové hospodaření,
- d) revizní postupy, které zajišťují prověření správnosti vybraných operací, jakož i revizní postupy k funkčně a organizačně nezávislému vyhodnocování přiměřenosti a účinnosti finančních kontrol zavedených v rámci systému řízení.

⁴⁹⁹ (3) Kontrolní metody a kontrolní postupy zahrnují i auditní metody a auditní postupy podle a k naplnění požadavků přímo použitelných předpisů Evropských společenství.

(4) Bližší podrobnosti o kontrolních metodách a kontrolních postupech stanoví prováděcí právní předpis.

- 72 The Czech Ministry of Finance's competence in financial inspection is, in part, delegated to more specialised authorities. While the Ministry retains overarching responsibility, specific tasks are carried out by designated entities, reflecting a distribution of responsibilities to ensure a more targeted and effective oversight framework (see ss. 7 et seq. FIA).
- 73 Furthermore, s. 11 FIA delineates the administrative depth of inspection undertaken by the competent authorities. These authorities are tasked with assessing the beneficiary and their plans for utilising the allocated funds. This assessment encompasses a general compliance check, the adoption process, monitoring of time limits and data, as well as evaluation of measures already implemented. National law explicitly aligns with Union standards, mandating inspection over the "adequacy and effectiveness of the financial inspection system and the correctness of operations" (see s. 11(6) FIA):

- 74 **Section 11 Provisions on the Competence of Inspection Authorities**⁵⁰⁰
- (1) During the **public administration inspection preceding the decision to approve** the use of public funds, the inspection authorities shall review the documents submitted by the inspected persons concerning the planned operations prior to their implementation. This phase of inspection primarily occurs before a decision is adopted or a contract is concluded, obligating public administration bodies to public expenditures or other property-related performance. It focuses on examining facts critical to the authorisation of such expenditures or performances.
- (2)⁵⁰¹ During the **preliminary public administration inspection**, inspection authorities evaluate whether the planned and prepared operations conform to the designated objectives of public administration and comply with statutes, approved budgets, programmes, projects, contracts, or other decisions governing the management of public funds.

⁵⁰⁰ § 11 Společná ustanovení k působnosti kontrolních orgánů

(1) Při veřejnosprávní kontrole, která předchází rozhodnutím o schválení použití veřejných prostředků, prověřují kontrolní orgány podklady předložené kontrolovanými osobami pro připravované operace před jejich uskutečněním. Tato kontrola se soustřeďuje především do období před přijetím rozhodnutí nebo uzavřením smlouvy, která zavazuje orgány veřejné správy k veřejným výdajům nebo jiným plněním majetkové povahy, a je zaměřena zejména na prověřování skutečností, které jsou rozhodné pro vynakládání těchto výdajů nebo pro jiná plnění.

⁵⁰¹ (2) Kontrolní orgány při předběžné veřejnosprávní kontrole posuzují, zda plánované a připravované operace odpovídají stanoveným úkolům veřejné správy a jsou v souladu s právními předpisy, schválenými rozpočty, programy, projekty, uzavřenými smlouvami nebo jinými rozhodnutími o nakládání s veřejnými prostředky.

(3) Při průběžné veřejnosprávní kontrole hospodaření kontrolovaných osob s veřejnými prostředky kontrolní orgány prověřují zejména, zda tyto osoby

a) dodržují stanovené podmínky a postupy při uskutečňování, vypořádávání a vyúčtování schválených operací,
b) přizpůsobují uskutečňování operací při změnách ekonomických, právních, provozních a jiných podmínek novým rizikům,
c) provádějí včas a přesně zápisy o uskutečňovaných operacích v zavedených evidencích a automatizovaných informačních systémech a zda zajišťují včasnou přípravu stanovených finančních, účetních a jiných výkazů, hlášení a zpráv.

(3) During the **continuous public administration inspection** of the management of public funds by the inspected persons, the inspection authorities verify whether these beneficiaries:

- (a) adhere to the specified conditions and procedures during the execution, settlement and accounting of approved operations;
- (b) adapt the implementation of operations to new risks from economic, legal, operational, or other situational changes;
- (c) ensure timely and accurate recording of the operations within the designated registers and automated information systems and prepare the requisite financial, accounting and other statements, reports and submissions within the prescribed timelines.

(4) During the public inspection carried out following the accounting of operations, the inspection authorities undertake checks, examinations and evaluations on a selected sample of operations, specifically to determine whether:

- (a) the data concerning the management of public funds accurately reflects the sources, status and movement of such funds, and whether these data align with facts critical to the realisation of public income, expenditure and overall public funds management;
- (b) the examined operations comply with statutes, approved budgets, programmes, projects, concluded contracts, or other decisions taken within the management framework, and satisfy the principles of economy, efficiency and effectiveness;
- (c) the measures implemented by the relevant public administration bodies, including those aimed at eliminating, mitigating, or preventing risks, are being adhered to by the inspected persons.

(5) The results of the review and evaluation of operations pursuant to paragraph 4 serve as the foundation of assessing the adequacy and effectiveness of the financial inspection systems established by public administration bodies in accordance with s. 3(1)(a) and (c).

(4) Při veřejnosprávní kontrole vykonávané následně po vyúčtování operací kontrolní orgány prověřují, zkoumají a vyhodnocují u vybraného vzorku těchto operací zejména, zda

- a) údaje o hospodaření s veřejnými prostředky věrně zobrazují zdroje, stav a pohyb veřejných prostředků a zda tyto údaje odpovídají skutečností rozhodným pro uskutečnění veřejných příjmů, výdajů a nakládání s veřejnými prostředky,
- b) přezkoumávané operace jsou v souladu s právními předpisy, schválenými rozpočty, programy, projekty, uzavřenými smlouvami nebo jinými rozhodnutími přijatými v rámci řízení a splňují kritéria hospodárnosti, účelnosti a efektivnosti,
- c) opatření přijatá příslušnými orgány veřejné správy včetně opatření k odstranění, zmírnění nebo předcházení rizik jsou kontrolovanými osobami plněna.

(5) Výsledky přezkoumání a vyhodnocení operací podle odstavce 4 jsou podkladem k prověřování přiměřenosti a účinnosti systémů finanční kontroly, zavedených u orgánů veřejné správy podle § 3 odst. 1 písm. a) a c).

(6) Při auditu vykonávaném podle přímo použitelných předpisů Evropských společenství kontrolní orgány posuzují přiměřenost a účinnost systému finanční kontroly a správnost operací.

(6) When conducting audits under the directly applicable regulations of the European Communities, the inspection authorities assess both the adequacy and effectiveness of the financial inspection system and the accuracy of operations performed.

3.8.3. Protection of Information

- 75 The protection of information during or after investigations is of paramount importance. OLAF officials and administrative authorities may have to deal with procedural errors during an investigation. Similarly, the admissibility of evidence that was gathered may be jeopardised if the defence files a justified application due to any data protection failures or leaks of personal information.⁵⁰² It is therefore essential to examine the scope of information protection in the investigative fields of OLAF and its national partners, as well as the relevant legal provisions.
- 76 In all investigations, the **Regulation of the European Parliament and Council Directive (EU) 2016/679 of 27 April 2016 (GDPR)** mandates the protection of personal data acquired through audits and inspections, particularly in areas such as customs and tax irregularities.

3.8.4. Seizure of Digital Evidence and Bank Account Data

- 77 The seizure of digital forensic evidence, including access to bank account information, is gaining increasing importance. Recent amendments to OLAF Regulation No 883/2013 (as amended by Regulation 2020/2223) formally codify that OLAF shall, under conditions identical to those applicable to national competent authorities, be granted access to bank account information.
- 78 In alignment with these changes, the Czech legislator introduced amendments through the **Act on the Coordination of Cooperation with OLAF** [zákon č. 34/2023 Sb., o koordinaci spolupráce s Evropským úřadem pro boj proti podvodům]. These statutes explicitly acknowledge **OLAF** as the competent Union body with authority to request information in the scope stated therein (see Art 2 OLAF Regulation, Chapter 2.2).
- 79 The applicable statutes in this area include:
- Act on Banks [zákon č. 21/1992 Sb., o bankách]
 - Competence Act [zákon č. 2/1969 Sb., kompetenční zákon]
 - Act on Savings and Credit Cooperatives [zákon č. 87/1995 Sb., o spořitelních a úvěrních družstvech]
 - Act on the Central Register of Accounts [zákon č. 300/2016 Sb., o centrální evidenci účtů]
- 80 OLAF is subject to the requirements set out in the **Act on the Central Register of Accounts**. Sections 6–7 et seq. of this Act set forth detailed rules governing the specifics

⁵⁰² See Garamvölgyi et al. 2021.

of such requests, including requirements for justification, procedural safeguards and the handling of sensitive information. These provisions ensure that any data access is lawful, proportionate and strictly limited to the objectives of the investigation, safeguarding against misuse or unwarranted disclosure.

Data from the Central Register of Accounts can only be requested by authorities explicitly listed under s. 6 of the Act. Only designated entities, such as law enforcement agencies, judicial bodies, or other competent authorities, have the legal mandate to access such sensitive information. For the wording of s. 6, see Part B.II, Chapter 1.2.4, letter b). Section 7 of the Act then defines contents of a request for the provision of data from the Central Register of Accounts.⁵⁰³

81

All requests for access to bank account information must comply with the requisites established under the **Act on Banks**, specifically regarding bank secrecy. **OLAF** is explicitly referenced in s. 38(3)(o) of the Act. This provision mandates that the relevant bank provide a report to the Ministry of Finance (via the Czech AFCOS Department 42 within the Ministry) and OLAF, but only upon receipt of a written request. Such requests must align with the formal requirements stipulated in the Act on the Coordination of Cooperation with the European Anti-Fraud Office.

82

Section 38(4) of the **Act on Banks** sets forth rules governing the disclosure of information, notwithstanding the provisions on bank secrecy. Any request for disclosure must comply with the principles of proportionality and specificity. It must provide a clear rationale, ensuring that the bank and its accountants fully comprehend their respective obligations. The provision is worded as follows:

83

⁵⁰³ **Section 7**

(1) A request for the provision of data from the Central Register of Accounts shall include the designation of the relevant proceedings within which the authorised body is requesting data from the Central Register of Accounts, as well as the File ID under which these proceedings are conducted. An intelligence service must also indicate the File ID of the judicial decision by which it was authorised to request the provision of the report, as governed by the law regulating intelligence services. An extract from a judicial decision or other evidence of compliance with the conditions for submitting an application under special statutes is not required. For the authority responsible for tracing property from criminal activity, the request shall also specify the identification data clearly identifying the natural person who submitted the request for data on behalf of the authority, the individual who ordered the submission of the application and the recipient of the requested data. The request is not required to provide justification.

(2) The applicant must submit the request pursuant to paragraph 1 exclusively through the designated data box of the applicant to the data box established by the Czech National Bank for the Central Register of Accounts.

(3) Identifiers of data boxes for submitting applications and any changes thereto, must be communicated to the Czech National Bank by: [...]

i) the Ministry of Finance for the purposes of ensuring coordination of cooperation with the European Anti-Fraud Office, as stipulated under the Act on the Coordination of Cooperation with the European Anti-Fraud Office.

(4) The formal requirements, structure and format of the notification pursuant to paragraph 3 and the method of its delivery shall be determined by the Czech National Bank by decree.

Section 38⁵⁰⁴

(1) Bank secrecy applies to all banking transactions and financial services of banks, including balances on accounts and deposits. This does not preclude the possibility of providing a report on matters subject to bank secrecy at the clients' request or with their consent.

(2) Banks are obliged to provide reports on matters subject to bank secrecy to those entrusted with banking supervision. The exchange of information between the Czech National Bank and other banking supervisory authorities or equivalent bodies in other states does not constitute a violation of bank secrecy, provided the information concerns entities operating or intending to operate in the relevant state. **Similarly, sharing client and transaction data in connection with filing a criminal report**, fulfilling obligations under the Act on Certain Measures Against Money Laundering and the Financing of Terrorism, or under the Act on the Implementation of International Sanctions, or transferring data under the Act on the Central Register of Accounts, does not constitute a breach of bank secrecy.

(3) Banks shall provide reports on matters subject to bank secrecy only upon written request from:

- (a) a court for civil court proceedings;
- (b) law enforcement agencies under the conditions stipulated by specific statutes;**
- (c) tax administrators under the Tax Code;**
- (d) the financial arbitrator for disputes under conditions stipulated by specific statutes;

⁵⁰⁴ § 38

(1) Na všechny bankovní obchody, peněžní služby bank, včetně stavů na účtech a depozit, se vztahuje bankovní tajemství. Tím není dotčena možnost podat zprávu o záležitostech týkajících se klienta, které jsou předmětem bankovního tajemství, na základě jeho žádosti nebo s jeho souhlasem.

(2) Zprávu o všech záležitostech, které jsou předmětem bankovního tajemství, je banka povinna podat osobám pověřeným výkonem bankovního dohledu. Za porušení bankovního tajemství se nepovažuje výměna informací mezi Českou národní bankou a orgány bankovního dohledu a obdobnými orgány jiných států, jestliže předmětem výměny jsou informace o subjektech, které působí nebo hodlají působit na území příslušného státu. Porušením povinnosti dodržet bankovní tajemství rovněž není sdělení údajů o klientovi a jeho obchodech při podání trestního oznámení, při plnění oznamovací povinnosti podle zákona o některých opatřeních proti legalizaci výnosů z trestné činnosti a financování terorismu nebo podle zákona nebo při plnění povinnosti předávat údaje podle zákona o centrální evidenci účtů.

(3) Zprávu o záležitostech, které jsou předmětem bankovního tajemství, podá banka jen na písemné vyžádání

- a) soudu pro účely občanského soudního řízení;
- b) orgánu činného v trestním řízení za podmínek, které stanoví zvláštní zákon;
- c) správci daně za podmínek podle daňového řádu,
- d) finančnímu arbitrovi rozhodujícímu ve sporu podle zvláštního právního předpisu,
- e) Finančnímu analytickému úřadu za podmínek, které stanoví zákon o některých opatřeních proti legalizaci výnosů z trestné činnosti a financování terorismu nebo zákon o provádění mezinárodních sankcí, [...]
- o) Ministerstvu financí za podmínek, které stanoví zákon o pojišťování a financování vývozu se státní podporou, nebo zákon o koordinaci spolupráce s Evropským úřadem pro boj proti podvodům, [...].

Písemné vyžádání musí obsahovat údaje, podle nichž může banka příslušnou záležitost identifikovat.

(e) the Financial Analysis Office under the conditions stipulated by the Act on Certain Measures Against Money Laundering and the Financing of Terrorism or the Act on the Implementation of International Sanctions;

[...]

(o) the Ministry of Finance, under the conditions stipulated by the Act on Insurance and Financing of Exports with State Support, or the Act on Coordination of Cooperation with the European Anti-Fraud Office [...].

The written request must include information to enable the bank to identify the matter in question.

[...]

(6)⁵⁰⁵ The bank is obliged, even without the client's consent, to provide the State Agricultural and Food Inspectorate, upon written request and under the conditions specified in the Act on the State Agricultural and Food Inspectorate, with the account number or other unique identifier of the account it maintains, the identification data of the client who owns the account and information about the authorised representative permitted to manage the funds in the account.

(7) For submitting a report according to paragraph 3(a) and (h), the bank is entitled to reimbursement of material costs.

[...]

(9) If the client falls into arrears with monetary payments to the bank for a period exceeding 60 days or violates their obligations towards the bank, as agreed in the contract or stipulated by law, the bank's obligation to maintain bank secrecy is limited. In such cases, the bank may publish the information no earlier than 30 days after the breach of duty by the client. The bank may only disclose the identification data of the client as specified in s. 41c(3) and the description of the breached duty.

⁵⁰⁵ (6) Banka je povinná i bez souhlasu klienta poskytnout Státní zemědělské a potravinářské inspekci na písemné vyžádání za podmínek stanovených zákonem o Státní zemědělské a potravinářské inspekci číslo nebo jiný jedinečný identifikátor účtu, který vede, a identifikační údaje o svém klientovi, který je majitelem tohoto účtu, a zmocněnci, který je oprávněn nakládat s peněžními prostředky na tomto účtu.

(7) Za podání zprávy podle odstavce 3 písm. a) a h) náleží bance úhrada věcných nákladů. [...]

(9) Jestliže se klient dostane do prodlení s peněžitým plněním bance na dobu delší než 60 dnů nebo poruší své povinnosti vůči bance sjednané ve smlouvě nebo stanovené zákonem, omezuje se povinnost banky zachovávat bankovní tajemství tak, že banka může nejdříve 30 dnů poté uveřejnit informaci o porušení povinnosti klientem, přičemž smí uvést jen identifikační údaje klienta podle § 41c odst. 3 a označení porušené povinnosti.

(10) Na pobočku banky z členského státu se použijí odstavce 2 až 9 obdobně a na pobočku banky z jiného než členského státu se použijí odstavce 1 až 9 a 12 obdobně.

(11) Zprávu o záležitostech týkajících se klienta, které jsou předmětem bankovního tajemství, podá banka v souvislosti se svým podnikáním na území jiného státu i bez souhlasu klienta, pokud je to nutné ke splnění povinnosti uložené právním řádem státu, na jehož území podniká.

(12) Porušením bankovního tajemství není předání informací jinému poskytovateli platebních služeb nebo v rámci platebního systému, pokud je to nezbytné z důvodu předcházení podvodům v oblasti platebního styku, jejich vyšetřování a odhalování.

(10) Paragraphs 2 to 9 shall apply *mutatis mutandis* to a branch of a bank from a Member State and paragraphs 1 to 9 and 12 shall apply *mutatis mutandis* to a branch of a bank from a non-member state.

(11) The bank shall submit a report on matters concerning the client, which are subject to bank secrecy, in connection with its business in the territory of another state, even without the client's consent, if it is necessary to fulfil an obligation imposed by the legal order of the state in which the bank operates.

(12) The transfer of information to another payment service provider or within the payment system does not constitute a violation of bank secrecy if this is necessary for the prevention, investigation, or detection of fraud in the field of payment.

3.8.5. Tax Secrecy

- 85 **Tax secrecy** is a cornerstone of tax proceedings, generally ensured without issue and even rigidly observed. Determining whether participants fall within the scope of **tax administration** (see above Chapter 2.3) is crucial, as it delineates the applicable legal framework for accessing information (e.g. whether the Administrative Code can be utilised as a subsidiary statute). This distinction affects, for example, the extent to which individuals are entitled to access information regarding the handling of their submission to initiate proceedings.
- 86 It should be noted that the **scope of utilisation** of the Act on the Coordination of Cooperation with OLAF [zákon č. 34/2023 Sb., o koordinaci spolupráce s Evropským úřadem pro boj proti podvodům] remains limited. The s. 1(2)(b) stipulates exclusion of applicability for tax administration. For the verbatim reproduction of the provision, see Arts 1, 2 OLAF Regulation, Chapter 2.2.
- 87 This does not preclude the tax authority's right to notify relevant authorities if an offence within their jurisdiction may have been committed. In the context of criminal proceedings, beyond the general reporting obligation imposed on all state authorities (s. 8(1) *in fine* CCP), law enforcement agencies are also granted a specific right to request information that would otherwise be protected by tax secrecy. Under s. 71a of the Act on the Police of the Czech Republic [zákon č. 273/2008 Sb., o Policii České republiky], designated law enforcement agencies are entitled to request information from tax authorities, and compliance with such requests does not constitute a breach of tax secrecy:

Section 71a⁵⁰⁶

A specialised police unit designated by the Police President may request from the tax administrator information obtained in the administration of taxes for the purposes of criminal proceedings or initiating such proceedings, provided that it is necessary for fulfilling a specific task in combating corruption, terrorism, organised crime, tax and financial crimes, serious economic offences, and money laundering. The disclosure of information under this provision does not constitute a breach of confidentiality obligations under the Tax Code.

88

This applies also to customs authorities when the CCP grants them investigative powers (see Part B, Chapter 2), as per s. 11a of the Act on the Customs Administration of the Czech Republic [zákon č. 17/2012 Sb., o Celní správě České republiky]:

89

Section 11a Special Rules on Information Disclosure⁵⁰⁷

A designated customs authority may request from the tax administrator information obtained in the administration of taxes for the purposes of criminal proceedings or initiating such proceedings, provided that it is necessary for fulfilling a specific task in combating criminal activity in cases where customs authorities act as authorities involved in criminal proceedings. Disclosing information under this section does not constitute a breach of confidentiality obligations under the Tax Code.

90

3.9. Investigative Missions in Third Countries

Investigative measures conducted abroad through the cooperation of OLAF, international enforcement groups⁵⁰⁸ and Czech authorities are based on internal conventions or agreements of OLAF.⁵⁰⁹ From the first two decades of the 21st century, it is already evident that missions in Southeast Asia often involve and shall involve verifying irregularities in the area of anti-dumping. So far, such missions primarily concerned customs duties irregularities and the evasion of duties, which would otherwise harm the revenue side of the EU budget. Several notable cases involving OLAF missions in third countries

91

⁵⁰⁶ § 71a

Specializovaný útvar policie určený policejním prezidentem může pro účely trestního řízení nebo pro účely zahájení trestního řízení žádat od správce daně informace získané při správě daní, je-li to nezbytné pro plnění konkrétního úkolu v oblasti boje proti korupci, terorismu, organizovanému zločinu, daňové, finanční a závažné hospodářské kriminalitě a legalizaci výnosů z trestné činnosti. Poskytnutí informací podle tohoto ustanovení není porušením povinnosti mlčenlivosti podle daňového řádu.

⁵⁰⁷ § 11a Zvláštní ustanovení o poskytování informací

Pověřený celní orgán může pro účely trestního řízení nebo pro účely zahájení trestního řízení žádat od správce daně informace získané při správě daní, je-li to nezbytné pro plnění konkrétního úkolu v oblasti boje proti trestné činnosti v případech, kdy jsou celní orgány orgány činnými v trestním řízení. Poskytnutí informací podle tohoto ustanovení není porušením povinnosti mlčenlivosti podle daňového řádu.

⁵⁰⁸ See OLAF Press release, OLAF Launches Enforcement Group to Tackle Illegal Waste Shipments, 23 May 2025, https://anti-fraud.ec.europa.eu/media-corner/news/olaf-launches-enforcement-group-tackle-illegal-waste-shipments-2025-05-23_en. Accessed 31 March 2025

⁵⁰⁹ For special categorisation, see Scharf-Kröner and Seyderhelm 2019, pp. 209–218.

and relating to the Czech Republic have been highlighted in case studies throughout the compendium (see for example Art 3 OLAF Regulation, Chapter 3.5).

3.10. Mutual Assistance and Cooperation

- 92** **Mutual assistance** plays a critical role in effectively addressing transnational irregularities and fraud. Particularly in **customs** matters, this method has been in place for 26 years. Relevant framework can be found within the Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.
- 93** The Commission constantly updates the **access to essential information for OLAF** and its national partners. In customs matters, for example, Commission Regulation (EU) 2016/345 of 10 March 2016 establishes the frequency of reporting on the status of containers, the format of the data and the method of transmission.
- 94** With regard to **international assistance in tax administration**, see Act on International Assistance in the Administration of Taxes [zákon č. 164/2013 Sb., o mezinárodní spolupráci při správě daní]. Please note that the scope of this statute may be limited, as in other areas, by EU legislation and bilateral treaties.

4. 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.

4.1. References to National Law (Paragraph 8)

Internal investigations of OLAF may have implications at the national level at particularly for authorities that collaborate with OLAF, oversee the financial management of the economic operator, or are responsible for disciplinary measures concerning officials operating at the Union level or as national experts within OLAF (particularly in cases involving corruption). The interplay between national disciplinary proceedings, Union-level disciplinary measures, and national criminal proceedings is of paramount importance.⁵¹⁰

Act on Conflict of Interests [zákon č. 159/2006 Coll., o střetu zájmů] should be further considered in relation to potential breaches examined in Part B concerning the EPPO, as well as in Part C regarding administrative offences under sector-specific statutes. Violations of the Act on Conflict of Interests frequently indicate broader inconsistencies, potentially giving rise to suspicions of administrative and/or criminal offences.

4.2. Competent Authorities

The identification and selection of the competent national authorities is essential. In cases involving suspicion of a criminal offence, the relevant authority to conduct the

⁵¹⁰ See for example ECJ, Research note, Impact of ongoing criminal proceedings on the conduct of disciplinary proceedings. Available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-09/ndr_2020_001_neutralisee_en.pdf. Accessed 31 May 2024.

Art 4 OLAF Regulation

proceedings may be either the EPPO or the national prosecution authorities (see Chapters 1, 2). For administrative offences, reference should be made to the list of competent national authorities provided earlier (see above Chapter 1.1). See also details under Art 5 OLAF Regulation.

5. 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.

For an overview of the authorities that typically conduct proceedings in cases involving suspected breaches of administrative or criminal statutes, refer to the relevant listings provided earlier (Art 1, 2 OLAF Regulation). 1

However, it should be understood that relevant first-contact points are in practice fewer and include the national prosecution authority, the Ministry of Finance with its Share-Point AFCOS, and the General Customs Directorate [*Generální ředitelství cel*]. 2

The **Ministry of Finance** (AFCOS) serves as the main coordinating bodies in relation to administrative proceedings (see in detail Art 12a OLAF Regulation). 3

In relation to national prosecution authorities, the **Supreme Prosecutor's Office** [NSZ, *Nejvyšší státní zastupitelství*] plays a pivotal role in coordinating cooperation between national authorities and EU bodies, as previously discussed in Part B. 4

The **National Headquarters against Organised Crime of the Criminal Police and Investigation Service** [NCOZ, *Národní centrála proti organizovanému zločinu*] works closely with the Supreme State Prosecutor's Office and the Public Prosecutor's Offices and cooperates with OLAF in criminal matters.⁵¹¹ 5

The **General Directorate of Customs** [*Generální ředitelství cel*] is also highly relevant, particularly in cases involving export refunds on certain products and customs duties. 6

A national **ministry** may, in certain cases, be the competent authority to initiate investigations in the context of indirect funding schemes. For instance, the Ministry of Industry and Transportation, as the authority responsible for collecting duties arising from payment obligations or enforcing repayment clauses in public procurement contracts, may hold critical information relevant to uncovering irregularities. 7

Other ministries may perform similar functions, as defined by sector-specific statutes, or in relation to public financial inspection. 8

⁵¹¹ See National Strategy on the Protection of the Financial Interests of the EU 2024, p. 18.

- 9 Furthermore, it is important to highlight the role of the **Supreme Audit Office** [*Nejvyšší kontrolní úřad*, see Act on the Supreme Audit Office].⁵¹² The **Office for the Protection of Economic Competition** [*Úřad pro ochranu hospodářské soutěže*] holds jurisdiction over matters of public procurement and other significantly financed projects.

[Article 6 – Access to information in databases prior to the opening of an investigation]

Not analysed here.

⁵¹² Zákon č. 166/1993 Coll., o Nejvyšším kontrolním úřadu.

6. 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;
- (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.

6.1. References to National Law

10 Table 18: Relevant National Statutes (Art 7 OLAF Regulation)

Para-graph 3	See in detail Czech statutes referred to under Art 3 OLAF Regulation, especially Chapter 2 et seq. When interpreting provisions of any sector-specific administrative statute, one should always analyse the relation to the Administrative Code [zákon č. 500/2004 Sb., správní řád] and the Inspection Code [zákon č. 255/2012 Sb., o kontrole] Customs authorities operate under the provisions of: · Customs Act [zákon č. 242/2016 Coll., celní zákon] · Act on the Customs Administration of the Czech Republic [zákon č. 17/2012 Sb., o Celní správě České republiky]. Tax inspectors derive their authority from: · Tax Code [zákon č. 280/2009 Sb., daňový řád] · Act on the Financial Administration of the Czech Republic [zákon č. 456/2011 Sb., o Finanční správě České republiky]. Issues pertaining to financial control are governed by the Financial Inspection Act [zákon č. 320/2001 Sb., o finanční kontrole].
Para-graph 3a(a) and (b)	Additionally, the Act on Banks [zákon č. 21/1992 Sb., o bankách] and the Act on the Central Register of Accounts [zákon č. 300/2016 Sb., o centrální evidence účtů] may also be relevant with regard to the information OLAF aims to obtain (see above Art 3 OLAF Regulation, Chapter 2).
Para-graph 6(c)	With regard to confidentiality obligations, refer to the relevant provisions of the Act on Coordination of Cooperation with OLAF [zákon č. 34/2023 Sb., o koordinaci spolupráce s Evropským úřadem pro boj proti podvodům; see above Arts 1, 2 OLAF Regulation, Chapter 2.2], which outlines the methods by which investigating authorities may obtain information otherwise protected by banking secrecy under the Act on Banks, as well as procedural provisions under the Act on the Central Register of Accounts. This provision also discusses tax secrecy and its limitations. For the general protection of personal data, it is important to note that the previously existing statute has been repealed and replaced by the

	Act on the Processing of Personal Data [zákon č. 110/2019 Sb., o zpracování osobních údajů]. Misreferences to previous statutes, particularly to the Act on the Protection of Personal Data [zákon č. 101/2000 Sb., o ochraně osobních údajů], continue to appear in certain instances. For the protection of sensitive information, see the Act on the Protection of Classified Information and Security Clearance [zákon č. 412/2005 Sb., o ochraně utajovaných informací a bezpečnostní způsobilosti].
Paragraph 7	In relation to paragraph 7, reference can be made to the measures for evidence gathering outlined in Art 3 OLAF Regulation. For criminal proceedings, see measures introduced in Part B.II on Art 30 EPPO Regulation.

Source: The authors.

6.2. References to National Authorities

For references to the relevant national authorities, see the enumeration provided above in Art 1, 2 OLAF Regulation, Chapter 1.1. See also Art 5 OLAF Regulation.

11

7. Article 8 Duty to Inform the Office

1. The institutions, bodies, offices and agencies shall transmit to the Office without delay any information relating to possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union.

2. The institutions, bodies, offices, and agencies and, unless *prevented by national law*, the *competent authorities of Member States* shall, at the request of the Office or on their own initiative, transmit without delay to the Office any document or information they hold which relates to an ongoing investigation by the Office. [...]

3. The institutions, bodies, offices and agencies and, unless *prevented by national law*, the *competent authorities of Member States* shall transmit without delay to the Office, at the request of the Office or on their own initiative, any other information, documents or data considered pertinent which they hold, relating to the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

- 1 A reporting duty arises from the **principle of sincere cooperation with Union bodies**, as codified in Art 4(3) TEU. This principle applies across all areas where potential irregularities and frauds may occur (for the typology of EU frauds, see Part 2, Art 26 EPPO Regulation, especially Chapter 2.3.6). Additionally, Art 12a, in conjunction with Arts 8(2) and (3) OLAF Regulation, imposes an obligation on the AFCOS of each Member State to report any of the requested material to OLAF. These obligations extend across various areas of irregularity (e.g. tax-related revenue, customs revenue, tax expenditure related to structural funds and direct grants).
- 2 It is worth reiterating the observations made above concerning Art. 3 of the OLAF Regulation. The Czech national authority tasked with drafting the National Anti-Fraud Strategy emphasises specific rules governing the reporting of discrepancies and fraud to OLAF. The principal rule is as follows:
- 3 For administrative offences, reporting falls under the **Ministry of Finance – AFCOS**. In cases involving potential criminal liability, the **Supreme Prosecutor’s Office** takes the lead, with the **National Headquarters Against Organised Crime** also playing a key role in investigating such offences. While recent reports explicitly name the last authority as a reporting authority, the Supreme Prosecutor’s Office remains the primary body. For matters concerning the revenue side of the budget, the **General Directorate of Customs** is the competent authority.⁵¹³
- 4 From a legal and institutional standpoint, this approach is both appropriate and necessary, as it provides clarity for national authorities responsible for detecting suspicious

⁵¹³ See National Strategy on the Protection of the Financial Interests of the EU 2024, p. 18.

activities. At the same time, it underscores the importance of properly assessing the suspicious nature of such findings. Where a serious or potentially criminal offence is identified, the most severe legal instrument – namely, criminal law – should be applied, where appropriate. In such cases, specific competences may come into play, particularly in instances involving the EPPO (see Chapter 4).

Under Arts 22–25 EPPO Regulation in conjunction with Art 27 EPPO Regulation, the EPPO may assume jurisdiction by evoking proceedings from a national prosecutor. However, if the case remains below the thresholds, only a national prosecutor retains competence, unless the offence is inextricably linked (see Chapter 2.3.4).

As per the 2024 updated National Strategy on the Protection of the Interests of the EU, the Czech Republic acknowledges its reporting obligations under Art 8 OLAF Regulation and the Supreme Prosecutor’s Office provides OLAF with information on identified criminal law irregularities in the area of criminal proceedings and responds to additional information requests.⁵¹⁴

⁵¹⁴ National Strategy on the Protection of the Interests of the EU, p. 18.

8. Article 9 Procedural Guarantees

[...] 3. As soon as an investigation reveals that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, that official, other servant, member of an institution or body, head of office or agency, or staff member shall be informed to that effect, provided that this does not prejudice the conduct of the investigation or of any investigative proceedings *falling within the remit of a national judicial authority*.

4. [...] In duly justified cases where necessary to preserve the confidentiality of the investigation or an ongoing or future criminal investigation by the EPPO or a national judicial authority, the Director-General may, where appropriate after consulting the EPPO or *the national judicial authority concerned*, decide to defer the fulfilment of the obligation to invite the person concerned to comment. [...]

8.1. Remit of a National Judicial Authority (Paragraph 3)

- 1 The timing and format in which an individual is informed of an investigation against them vary across jurisdictions, as does the classification of authorities falling within the scope of national judicial authorities.
- 2 In the context of **administrative proceedings** and external inspections, the procedural framework for inspections is outlined in Art 3 OLAF Regulation. If suspicion of an offence arises during an inspection and proceedings for administrative offences are initiated, sector-specific statutes must be observed, but reference should also be made to the Act on Liability for Administrative Offences and Proceedings [zákon č. 250/2016 Sb., o odpovědnosti za přestupky a řízení o nich], which governs such matters.
- 3 In administrative matters, cases are **initially adjudicated by administrative authorities**, which are not classified as courts as they lack essential judicial attributes such as publicity and independence, remaining thus part of the executive branch. This distinction is already evident in Art 36(1) of the Charter. This establishes that everyone may seek the protection of their rights through the prescribed procedure before an independent and impartial court, and in specified cases, before another authority. Administrative authorities are regarded as these “other authorities” mentioned in the latter part of the provision. See Part B.I, Art 26 EPPO Regulation, Chapter 2.2.7, letter a) for the verbatim wording.
- 4 Decisions issued by administrative authorities may be **challenged** within the administrative hierarchy, typically to higher administrative bodies. If an individual does not accept an administrative decision and has exhausted all prescribed remedies, they may file a motion before an administrative court within the regional court system. In certain

cases, they may appeal directly to the Supreme Administrative Court, which also functions as the appellate body for administrative decisions issued by regional courts in specific cases.

Where the suspicion is of a criminal nature, the relevant provisions concerning the initiation of a **criminal investigation** against the accused (formal notification of charges) can be found in Part B.I, Art 26 EPPO Regulation, Chapter 2.2.1. 5

The Czech justice system consists of institutions and authorities previously outlined (see above Part A.II, Chapter 2). In criminal cases, prosecution before the courts can only proceed based on an **indictment**, an **application for a penalty**, or an **application for approval of a plea agreement**, all of which must be filed by a public prosecutor. 6

The judiciary in criminal matters includes district and regional courts, with appeals heard by the regional court if a district court ruled at first instance, or by the high court if the decision originated from a regional court. The Supreme Court serves as the highest judicial authority for civil and criminal cases within the general court system, except for matters falling under the jurisdiction of the Constitutional Court, with its primary role being adjudication of extraordinary remedies except for a proposal for a renewal of a trial. 7

8.2. National Judicial Authorities (Paragraph 4)

See above, and also Part C, Chapter 2 and Arts 5 and 8 OLAF Regulation. 8

9. 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. [...]

- 1 National confidentiality obligations in financial and administrative investigations must always be assessed in relation to the **Act on Coordination of Cooperation with OLAF** [zákon č. 34/2023 Sb., o koordinaci spolupráce s Evropským úřadem pro boj proti podvodům], as this statute amends the domestic framework applicable in cases involving OLAF. The statute establishes the conditions under which investigating authorities can access information that would otherwise be protected by strict confidentiality rules. For verbatim wording of the statute, see Art 1, 2 OLAF Regulation, Chapter 2.2.
- 2 One of the key areas affected is **banking secrecy**, which is governed by the **Act on Banks** [zákon č. 21/1992 Sb., o bankách]. This statute imposes strict limitations on the disclosure of financial data held by banking institutions. The Act on Coordination of Cooperation with OLAF introduces specific exceptions that allow investigating authorities to obtain such information when it is deemed necessary for the protection of the **European Union's financial interests**. Additionally, the **Act on the Central Register of Accounts** [zákon č. 300/2016 Sb., o centrálním registru účtů] further elaborates the procedural framework for accessing financial data, specifying how authorities may request and process information on account ownership and transactions (see in detail above, Art 3 OLAF Regulation, Chapter 2).
- 3 Similarly, **tax secrecy**, which generally restricts the disclosure of tax-related data, is subject to exceptions, particularly in the context of **criminal proceedings**. Under specific statutory provisions, law enforcement agencies may access certain tax-related information if necessary for the investigation or prosecution of criminal offences.
- 4 Regarding **personal data protection**, the legal framework has undergone significant changes. The former Act on the Protection of Personal Data [zákon č. 101/2000 Sb., o ochraně osobních údajů], which previously regulated data processing and privacy standards, has been **repealed and replaced** by the **Act on the Processing of Personal Data** [zákon č. 110/2019 Sb., o zpracování osobních údajů].
- 5 This legislative reform aligns Czech law with the **General Data Protection Regulation (GDPR)**, enhancing safeguards for individuals' personal data and clarifying obligations for data controllers and processors. Despite this update, outdated references to the repealed Act No 101/2000 Coll. continue to appear in some legal documents and interpre-

tations, leading to inconsistencies in legal practice. To ensure compliance, legal practitioners and authorities should refer exclusively to Act No 110/2019 Coll. when addressing data protection issues.

For **classified and sensitive information**, Act on the Protection of Classified Information and Security Clearance [zákon č. 412/2005 Sb., o ochraně utajovaných informací a bezpečnostní způsobilosti] provides the **primary legal framework**. This statute defines the procedures for handling information classified at various security levels and outlines the requirements for individuals and entities seeking **security clearance**. It also establishes **rules for granting, reviewing, and revoking security clearance**, ensuring that access to classified information remains strictly controlled and is limited to authorised individuals. The statute plays a vital role in safeguarding national security interests while ensuring compliance with both domestic and international security regulations. With regard to criminal investigations, refer to the prohibition of interrogation concerning classified information and its limitations, as outlined in s. 99 CCP (see Part B.I, Art 29 EPPO Regulation, Chapter 5.3.2, letter b)).

6

10. Article 11 Investigation Report and Action to Be Taken Following Investigations

[...] 2. In drawing up the reports and recommendations referred to in paragraph 1, account shall be taken of the relevant provisions of Union law and, in so far as it is applicable, *of the national law of the Member State concerned*.

Reports drawn up on the basis of the first subparagraph, together with all evidence in support and annexed thereto, shall constitute admissible evidence:

(a) *in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States;*

(b) *in criminal proceedings of the Member State* in which their use proves necessary in the *same way and under the same conditions* as administrative reports drawn up by *national administrative inspectors* and shall be subject to the *same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors* and shall have the same evidentiary value as such reports;

(c) in judicial proceedings before the CJEU and in administrative proceedings in the institutions, bodies, offices, and agencies.

Member States shall notify to the Office *any rules of national law relevant* for the purposes of point (b) of the second subparagraph.

With regard to point (b) of the second subparagraph, Member States shall, upon request of the Office, send to the Office the *final decision of the national courts* once the *relevant judicial proceedings* have been finally *determined* and the final court decision has become *public*.

The power of the CJEU and national courts and competent bodies *in administrative and criminal proceedings to freely assess the evidential value* of the reports drawn up by the Office shall not be affected by this Regulation. [...]

3. Reports and recommendations drawn up following an external investigation and any relevant related documents shall be sent to the *competent authorities of the Member States* concerned in accordance with the rules relating to external investigations and, if necessary, to the institution, body, office, or agency concerned. The competent authorities of the Member State concerned and, if applicable, the institution, body, office or agency *shall take such action as the results of the external investigation warrant* and shall report thereon to the Office within a timelimit laid down in the recommendations accompanying the report and, in addition, at the request of the Office. Member States may notify to the Office the relevant national authorities competent to deal with such reports, recommendations, and documents.

10.1. Recommendations and Subsequent Proceedings (Paragraph 2)

- 1 The Final Report is generally drafted by OLAF following its investigations (see Art 5 OLAF Regulation), and serves as the culmination of OLAF's investigative process and

formally concludes the procedure.⁵¹⁵ This report, which is prepared under the responsibility of the Director-General, can exert substantial influence on national judicial proceedings, particularly in analogous criminal cases (for example ss. 212 and 260 CC, see above Part B.III, Annex II: PIF Offences).

Paragraph 2 primarily addresses recommendations as well as subsequent judicial proceedings. Most of the aforementioned statutes on external investigations (see above Art 3 OLAF Regulation) contain provisions on corrective actions. Therefore, the relevant provisions of the applicable statute on corrections should be consulted within the specific context of each case. In doing so, it is essential to consider the relationship between the respective statutes, including the interplay between *lex specialis* and *lex generalis* principles (see above Art 3 OLAF Regulation, Chapter 2). See also Art 9 OLAF Regulation above.

Proceedings of a **non-criminal nature**, as described in **paragraph 2(a) to (c)**, may include tax, customs, and structural funds matters. They always fall within the scope of administrative procedures and are decided on primarily by administrative authorities rather than by courts. The relevant measures are outlined in the respective statutes under headings such as “Fines”, “Sanctions”, or “Administrative Sanctions”.

For a detailed discussion on **criminal proceedings**, see Part B, with particular attention to the commencement and conclusion of pre-trial proceedings as addressed in chapters pertaining to Arts 26 to 28 EPPO Regulation; investigative measures, especially in Arts 30 and 33; and cross-border considerations set out in Arts 31 and 32.

Concerning the reporting to OLAF, the AFCOS established a dedicated **SharePoint platform** [*Sběrná platforma (Sharepoint) AFCOS*] for recording judgments and submitting information to OLAF.⁵¹⁶ This platform has become one of the most effective information-sharing tools among Member States.

For example, **Report on the Activities of the AFCOS Central Contact Point for the Year 2019** [*Zpráva o činnosti CKB AFCOS za rok 2019*] highlighted that 11 judgments were submitted to the Czech AFCOS and reported to the EC.⁵¹⁷ The AFCOS Point compiles judicial decisions relating to Section 260 of the Criminal Code and publishes this information annually.⁵¹⁸

⁵¹⁵ See Salzano 2022 with examples from a prominent case.

⁵¹⁶ See <https://share.mfcr.cz/afcos>. This platform is accessible based on application. Accessed 31 March 2025.

⁵¹⁷ See https://www.mfcr.cz/assets/cs/media/Zprava_2019_Zprava-CKB-AFCOS.pdf, p. 9. Accessed 31 March 2025.

⁵¹⁸ See the latest report at <https://www.mfcr.cz/cs/zahranici-a-eu/ochrana-financnich-zajmu/financni-zajmy-eu/cinnost-ckb-afcos/2023/analyza-pravomocnych-rozsudku-dle-260-trestniho-z-55771>. Accessed 31 March 2025.

10.2. National Authority (Paragraph 3)

- 7 For administrative offences, principal contact point is the **Ministry of Finance – AFCOS**. In cases involving potential criminal liability, the **Supreme Prosecutor’s Office** takes the lead, with the **National Headquarters Against Organised Crime** also playing a key role in investigating such offences. For matters concerning the revenue side of the budget, the **General Directorate of Customs** is the competent authority to communicate with OLAF.⁵¹⁹ For further information, see Article 5 OLAF Regulation, where the roles of individual actors are described more comprehensively.



Nota bene: National authorities and the relation to “**such action as the results of the external investigation warrant**,” can e.g. be observed in various contexts. One such practical insight can be gained from the National Strategy: “As a result of mutual assistance reports issued by OLAF, the Customs Administration of the Czech Republic adopts recommended measures, such as setting risk profiles, assessing high-risk imports, or conducting post-release controls. Where suspicion of a customs fraud is confirmed, OLAF issues a financial recommendation advising the Customs Administration of the Czech Republic to reassess and recover the amount indicated therein.”⁵²⁰

- 8 Apart from reports mentioned in the previous chapter, evidentiary materials such as Czech statistics on crime, courts, and prosecution, as well as OLAF’s activities – particularly those involving Seconded National Experts (SNEs) from the Czech Republic to the European Commission – may be analysed to better understand the Czech landscape in this area and facilitate adequate reaction or prevention.

⁵¹⁹ See National Strategy on the Protection of the Financial Interests of the EU 2024, p. 18.

⁵²⁰ See National Strategy on the Protection of the Financial Interests of the EU 2024, p. 27.

II. References to National Law (Art 12–12e OLAF Regulation)

1. Article 12 Exchange of Information Between the Office and the Competent Authorities of the Member States

1. Without prejudice to Articles 10 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No. 2185/96, the Office may transmit to the competent authorities of the Member States concerned information obtained in the course of external investigations in due time to enable them to take appropriate action *in accordance with their national law*. It may also transmit such information to the institution, body, office, or agency concerned.

2. Without prejudice to Articles 10 and 11, the Director-General shall transmit to the *judicial authorities of the Member State concerned* information obtained by the Office, in the course of internal investigations, concerning facts which fall within the *jurisdiction of a national judicial authority*. [...]

3. The *competent authorities of the Member State concerned* shall, unless *prevented by national law*, inform the Office without delay, and in any event within 12 months of receipt of the information transmitted to them in accordance with this Article, of the action taken on the basis of that information.

4. The Office may *provide evidence* in proceedings before national courts and tribunals *in conformity with national law* and the Staff Regulations. [...]

1.1. Competent Authorities and Appropriate Action in Accordance with Their National Law (Paragraph 1)

The competent national authorities must be selected and identified from the list of competent national authorities introduced earlier, see Arts 5, 11 OLAF Regulation. For national law applicable on Czech inspections, see above Art 3 OLAF Regulation.

1.2. Judicial Authorities of the Member State Concerned (Paragraph 2, 4)

Distinct authorities must be identified depending on whether the matter concerns administrative or criminal proceedings, as well as the specific stage of the procedure.

Czech courts consist of various instances, as previously outlined (see Part A.II, Chapter 2). For Czech court structure, refer to the Act on Courts and Judges [zákon č. 6/2002 Sb., o soudech a soudcích]. With regard to criminal proceedings, see the CCP, and for administrative proceedings before courts, see Administrative Procedure Code [zákon č. 150/2002 Sb., soudní řád správní].

For other relevant authorities, see Arts 1, 2 OLAF Regulation, Chapter 1.1.

2. 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. [...]

2.1. Definition and History

- 1 The terms cooperation, coordination and facilitation frequently appear in anti-fraud literature.⁵²¹ Anti-fraud coordination services are a global phenomenon, often existing within international organisations and cooperating with national authorities.⁵²² In the EU, however, AFCOS holds a specific connotation, referring to Anti-Fraud Coordination Services established to facilitate interactions between the OLAF and the EU Member States (see relevant recitals listed in the subsequent chapter).⁵²³
- 2 The obligation to designate AFCOS derives from primary EU law, particularly Art 325 TFEU (formerly Art 280 TEC), which mandates collaboration between the Union and Member States in combating fraud. These services, tailored to financial and budgetary law, emerged in Member States’ justice and financial systems in the early 2000s.⁵²⁴ Their historical development is particularly linked to the new Member States preparing for EU accession. In 2010, the European Parliament advocated for AFCOS offices to be independent entities within Member States. However, this vision remains far from realisation, as AFCOS often **function as subunits deeply embedded within Treasury Departments, Departments of Commerce, or Ministries of the Interior**. While such placements facilitate coordination due to their proximity to administrative machinery, they raise efficiency concerns, as coordination can be subject to political will or manipulation.⁵²⁵

⁵²¹ Kuhl 2019, pp. 135, 160 et seq.; Wells 2014; Spink 2019; Saporta et Maraney 2022; FCPA 2012; ECA 2022; Malan 2022, pp. 135–139 discussing shared management; focusing on customs Van der Paal, Nurk et al. 2019; as well using the terms de Vries 2022, pp. 401–463; in an analytical style House of Lords 2013, pp. 32 et seq.

⁵²² Bartsiotas and Achamkulangare 2016; See World Customs Organization, http://www.wcoomd.org/en/about-us/partners/international_organizations.aspx; see UNDOC, <https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html>, focusing on the designation of anti-corruption bodies. They exist even on the national level and are especially common in federal state systems, see Austria, which has special administrative civil servants who fight fraud in the public sector [Betrugsbekämpfungskoordinator:inn], see <https://www.bmf.gv.at/en/topics/combating-fraud/anti-fraud-units/anti-fraud-coordinators.html>. Accessed 31 March 2025.

⁵²³ Kuhl 2019, pp. 135, 164.

⁵²⁴ Quirke 2015, pp. 232, 236 et seq.

⁵²⁵ See European Parliament (2009), 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)), OJ C 184 E, 8 July 2010, p. 72. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009IP0315>: “68. Points out that the Anti-Fraud Coordination Offices (AFCOS) set up for OLAF in the Member States which joined the European Union after 2004 are very important sources of information and contact points for OLAF; points out,

In most Member States today, AFCOS operates under legal and technical oversight in administrative areas such as tax, customs, structural funds management and regional cohesion policy.⁵²⁶ Positioned at high national levels, AFCOS have increasingly gained recognition as integral to the EU’s anti-fraud efforts. Since 2010, greater attention has been directed at these coordination points and they are now considered indispensable in the EU’s fight against fraud, often referred to as the “eyes and ears” of OLAF in Member States. Despite this progress, the level of development varies significantly among Member States.

AFCOS possess investigative powers in some Member States, making itself an “extended arm” of OLAF. By contrast, in countries like Germany and France, AFCOS operate more discreetly in the background, resulting in limited visibility and unclear activities within the anti-fraud framework. Activity reports from AFCOS often require specific requests from the European Commission or relevant OLAF departments. While national differences persist, a stronger push for a convergent anti-fraud structure at the EU level is necessary to ensure the robust protection of the Union budget.

2.2. Recent Developments in the Role of AFCOS

The European Commission has evaluated the role and impact of AFCOS over the past decade, noting significant developments at the beginning of the 2020s.⁵²⁷ Recent amendments introduced by Regulation (EU) 2020/2223 **have expanded the competencies** of AFCOS, enabling them to collaborate not only with the European Anti-Fraud Office (OLAF) in Luxembourg but **also directly with one another**. This marks a substantial shift from the earlier framework where cooperation was limited to interactions with OLAF.

The amendments provide valuable context for understanding the role of AFCOS through the Regulation’s recitals, which explicitly outline their responsibilities.

Recital (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

however, that the functional added value of these offices (in particular as regards reporting irregularities to the Commission) is minimal as long as they are not independent of the national administrations; Calls on the Commission, therefore, 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; [...].”

⁵²⁶ EU Commission 2013, p. 3.

⁵²⁷ European Commission (2017) Evaluation of Regulation (EU, EURATOM) No 883/2013 concerning OLAF. SWD/2017/0332 final. Brussels: European Commission, p. 3, 12, 72. The Commission document was accompanied by a Report (called ICF Report 2017), which resulted from an external study <https://data.europa.eu/doi/10.2784/281658>.

Regulation, in particular **concerning the transmission of information, the conduct of investigations and any follow-up action.** [...]

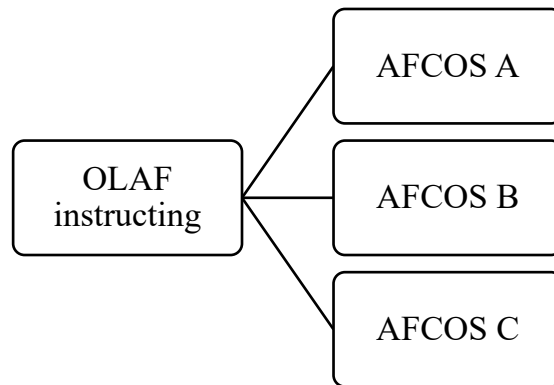
Recital (30): Due to the large diversity of national institutional frameworks, Member States should, on the basis of the principle of sincere cooperation, **have the possibility to notify to the Office the authorities that are competent to take actions upon recommendations of the Office**, as well as 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. [...]

Recital (37): The anti-fraud coordination services of Member States were introduced by Regulation (EU, Euratom) No. 883/2013 to facilitate an effective cooperation and exchange of information, including information of an operational nature, between the Office and Member States. The Commission evaluation report concluded that they have contributed positively to the work of the Office. The Commission evaluation report also identified the **need to further clarify the role of those anti-fraud coordination services** 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.** [...]

Recital (40): It should be possible for the anti-fraud coordination services in the context of coordination activities to aid 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.

Figure 7: Visualisation of the Previous Cooperation Framework under Regulation No 883/2013

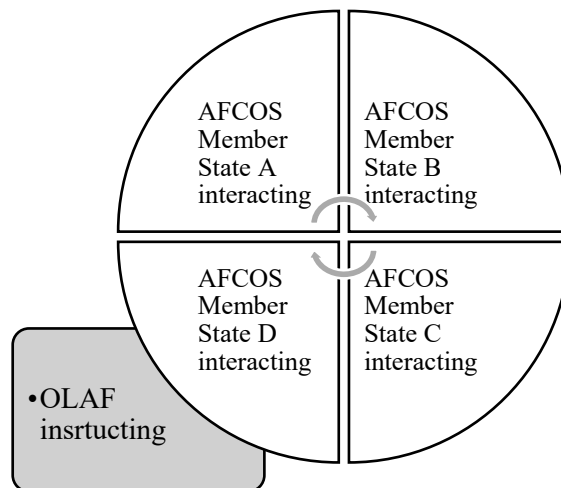
7



Source: The authors.

Figure 8: Visualisation of the Revised Cooperation Framework under Regulation No 883/2013 (as amended by 2020/2223)

8



Source: The authors.

2.3. Detailed Overview of the Czech Republic's AFCOS

2.3.1. Introductory Remarks

The Czech AFCOS is structured within the Ministry of Finance, where it has been based since 1 January 2008.⁵²⁸ Prior to this, from 2001 to 2007, it was located within the Su-

9

⁵²⁸ Annex 4 to the National Strategy on the Protection of the Financial Interests of the European Union – Entities Involved in the Protection of the EU's Financial Interests in the Czech Republic, p. 5.

preme Prosecutor’s Office. The founding legal act of the current AFCOS point was Resolution No 1010 of the Government of the Czech Republic, dated 5 September 2007.⁵²⁹ Its mission is to coordinate a network of entities in the Czech Republic focused on combating EU frauds and irregularities of spending or receiving (e.g. revenue duties).

- 10
- The AFCOS Central Contact Point (hereinafter referred to as “CKB AFCOS”) is a **department of Department 69 (and Department 47 for the National Anti-Fraud Strategy)** and consists of **eight employees**.⁵³⁰
- 11
- CKB AFCOS plays a key role in facilitating cooperation with OLAF on administrative matters. It coordinates interactions between OLAF and relevant domestic entities, ensuring the efficient conduct of investigations within the Czech Republic. Additionally, it oversees the reporting of irregularities at an external level, providing methodological guidance to ensure consistency in reporting practices.
- 12
- To fulfil these responsibilities, CKB AFCOS collaborates with Local AFCOS Contact Points (hereinafter referred to as “LKB AFCOS”) established across various ministries and the Prague City Hall. These local units assess internally reported irregularities and compile both routine and exceptional reports for external submission.
- 13
- CKB AFCOS personnel reviews and consults irregularity reports, prepared by LKB AFCOS, concerning the management of EU funds. If necessary, they request corrections before finalising and submitting the reports to OLAF via the Irregularity Management System (IMS).⁵³¹

2.3.2. Czech AFCOS Network

- 14
- The authorities within the Czech Republic that participate in the AFCOS network and contribute to the efficient and timely exchange of information are clearly outlined. As such, they are introduced below.
- 15
- Figure 9: Czech Authorities Involved in the AFCOS Network

Ministries	Other Authorities
Ministry of Finance - CKB AFCOS - Audit Authority - Payment and Certification Authority	Supreme Prosecutor’s Office

⁵²⁹ See <https://verejnazaloba.cz/vice-o-sz/mezinarodni-spoluprace/evropsky-urad-pro-boj-proti-podvodum/>. Accessed 31 May 2024. Accessed 31 March 2025.

⁵³⁰ Annex 4 to the National Strategy on the Protection of the Financial Interests of the European Union – Entities Involved in the Protection of the EU’s Financial Interests in the Czech Republic, p. 5.

⁵³¹ Ibid., p. 5. https://anti-fraud.ec.europa.eu/policy/union-anti-fraud-programme-uafp/union-anti-fraud-programme-ims-component_en.

• Department 47 – Central Harmonisation Unit • Department 11 – State Budget	
Ministry of Culture	Police of the Czech Republic
Ministry of Transportation	General Directorate of Customs
Ministry of Labour and Social Affairs	General Directorate of Finance
Ministry of Regional Development	State Agricultural Intervention Fund
Ministry of Industry and Trade	Czech National Bank
Ministry of Education, Youth and Sports	Ministry of Regional Development (National Coordination Body)
Ministry of Interior	Supreme Audit Office
Ministry of Health	
Ministry of Agriculture	
Ministry of Environment	
Department of Justice	

Source: Czech Ministry of Finance, Czech AFCOS, Department 4703 (Department 47), *National Strategy for the Protection of EU Financial Interests 2024*, p. 7, edited by authors.

2.3.3. The Official Logo of the Czech AFCOS

The official logo of AFCOS in the Czech Republic is shown below. In the left corner, it features the coat of arms of the Czech Republic [*velký státní znak České republiky*], which consists of four heraldic elements: twice the coat of arms of the historic lands of Bohemia [*Čechy*] – which is identical to the Czech national emblem – depicting a silver double-tailed lion with a golden crown on a red background; the coat of arms of Silesia [*Slezsko*], featuring a black eagle with a silver crescent on a golden background; the coat of arms of Moravia [*Morava*], showing a red-and-silver chequered eagle on a blue background.⁵³² The text on the logo further states “Ministry of Finance of the Czech Republic” on the first line, followed by “Central Contact Point AFCOS” underneath.

Figure 10: Logo of the Czech AFCOS



Source: *Formulář pro přístup do informačního systému/databáze (AFCOS)*. The form is available at: <https://www.mfcr.cz/cs/zahranicni-sektor/ochrana-financnich-zajmu/financni-zajmy-eu/cinnost-ckb-afcos/2020/formular-pro-pristup-do-informacniho-sys-38728>. Accessed 31 May 2025.

⁵³² The use of state symbols is regulated by the Act on the Use of State Symbols of the Czech Republic [zákon č. 352/2001 Sb., o užívání státních symbolů České republiky].

2.3.4. The Website of the Czech AFCOS

- 18 The website of the Czech AFCOS provides a well-organised overview of relevant information and may be seen as a relatively strong example of how AFCOS-related content can be made accessible to the public. It illustrates a considered approach to documentation, transparency, and information sharing. While practices differ across Member States, it may serve as a useful point of reference for future developments in these areas.
- 19 The Czech AFCOS has developed a SharePoint platform, which allows access to the Irregularity Management System for the Commission. Access to the SharePoint is granted upon request by the Ministry of Finance – CKB AFCOS upon submission and approval of a completed form. This form is accessible on the Ministry of Finance’s website and reproduced below.⁵³³

2.3.5. AFCOS Form for Accessing Database Information

- 20  **MINISTERSTVO FINANCÍ ČESKÉ REPUBLIKY**
CENTRÁLNÍ KONTAKTNÍ BOD AFCOS  **CKB AFCOS**

Formulář pro přístup do informačního systému/databáze

Požadovaný informační systém/databáze:

Subjekt

Název:

Adresa:

Žadatel

Titul, jméno a příjmení:

Telefon:

Email:

Pracovní zařazení:

Název útvaru:

Vedoucí zaměstnanec/nadřízený žadatele

Titul, jméno a příjmení:

Telefon:

Email:

Pracovní zařazení:

Zdůvodnění nezbytnosti disponovat příslušným přístupem:

Poučení žadatele v souvislosti se zpracováním osobních údajů

⁵³³ See <https://www.mfcr.cz/cs/zahranicni-sektor/ochrana-financnich-zajmu/financni-zajmy-eu/cinnost-ckb-afcos/2020/formular-pro-pristup-do-informacniho-sys-38728>. Accessed 31 May 2024.

Osobní údaje v rozsahu uvedeném na této žádosti jsou zpracovávány Ministerstvem financí ČR v souladu se zákonem 110/2019 Sb. Tento zákon upravuje zpracování osobních údajů podle nařízení Evropského parlamentu a Rady (EU) 2016/679 o ochraně osobních údajů a o změně a doplnění zákonů ve znění pozdějších předpisů. Žadatel i vedoucí zaměstnanec vyjadřují souhlas se zpracováním osobních údajů ve výše uvedeném rozsahu, pro účely vytvoření přístupu do příslušného informačního systému/databáze.

Poučení žadatele ke zřízení přístupových práv

Žadatel

je povinen poskytnout řádné zdůvodnění nutnosti disponovat daným přístupem a svým podpisem se zavazuje k odpovědnosti za vznik možných rizik⁵³⁴ souvisejících s takovým přístupem a nastavením.

V případě ukončení služebního/pracovního poměru žadatele je třeba o této skutečnosti v dostatečném předstihu informovat CKB AFCOS, aby mohl být příslušný přístup zrušen.

	Titul, jméno a příjmení	Datum	Podpis
Žadatel			
Vedoucí zaměstnanec			

The form originates from AFCOS. The authors explicitly acknowledge the source, while disclaiming ownership of the document.

21

⁵³⁴ Např. riziko úniku informací z databáze.

22 In English:

Form for access to the information system/database			
<u>Required information system/database:</u>			
<u>Subject</u>			
Name:			
Address:			
<u>Applicant</u>			
Title, name, and surname:			
Phone:			
E-mail:			
Job title:			
Name of department:			
<u>Applicant's senior employee/supervisor</u>			
Title, name, and surname:			
Phone:			
E-mail:			
Job title:			
<u>Justification for the need to have appropriate access:</u>			
 <u>Instructions for the applicant concerning the processing of personal data</u>			
Personal data to the extent indicated on this application is processed by the Ministry of Finance of the Czech Republic in accordance with Act 110/2019 Coll. This law regulates the processing of personal data in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of personal data and on the amendment and addition of statutes as amended. Both the applicant and the senior employee agree to the processing of personal data to the above extent, for the purpose of creating access to the relevant information system/database.			
<u>Instructions to the applicant on establishing access rights</u>			
The applicant is obliged to provide a proper justification for the need to have the given access and by signing, undertakes responsibility for any risks ⁵³⁵ related to such access and settings. In the event of termination of the applicant's service/employment relationship, CKB AFCOS must be informed of this fact in good time so that the relevant access can be revoked.			
	Title, name, and surname	Date	Signature
Applicant Senior employee			

⁵³⁵ For example, the risk of information leakage from the database.

2.3.6. Comparative Note on the Czech and Foreign AFCOS

When comparing the structure, organisation, and administrative setup of the Czech AFCOS with its counterparts in other Member States, notable differences can be observed. The Czech AFCOS operates within a structured framework, facilitating coordination between the national and local levels where EU spending is implemented. 23

A key strength lies in its network of local contact points, which are well-coordinated and interconnected. This structure enables the Czech AFCOS to effectively oversee and address issues across regional areas. In a relatively small country like the Czech Republic, this model proves to be particularly effective. However, the benefits of such an approach could be even more pronounced in larger Member States, such as Germany or France. While similar systems exist in these countries, they often remain overly centralised or internalised, limiting their practical accessibility and impact for administrative personnel. 24

The Italian AFCOS, being positioned in the political sphere rather than within a dedicated ministry, struggles to maintain transparency and accessibility. Similarly, the French MICAF system, which serves as the AFCOS body, has an external presence, including a website, similar to its Italian counterpart but provides equally limited public data. 25

The German AFCOS branch, housed within the Federal Ministry of Finance like the Czech AFCOS, is even less accessible. It lacks a standalone office open to the public or a dedicated website, offering instead sparse information through the organisational chart of the Federal Ministry of Finance. This chart, while updated approximately every two months, lists the branch as managed by a *Ministerialdirigent* – a mid-level federal civil servant. 26

Despite being part of the OAFCN network operated by OLAF and their contact details being listed there, a uniform approach to transparency and accessibility remains absent across these authorities. This lack of standardisation arises from the **overly heterogeneous design of the Union’s AFCOS bodies**, which prevents them from functioning as cohesive and equal coordinating entities capable of unifying anti-fraud case management. Although further comparisons between AFCOS systems in other Member States could yield similar observations, these methodological findings suffice to highlight the issue. For additional details, reference can be made to the **individual country chapters**. 27

[Article 12b–12d omitted]

3. Article 12e The Office’s Support to the EPPO

1. During 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 support provided by OLAF to the EPPO has been of fundamental importance since 1 July 2021, the date the EPPO began its operational activities. The necessity for cooperation between the authorities at the national level has been acknowledged at multiple levels in the latest National Strategy on the Protection of the Financial Interests of the EU 2024.⁵³⁶
- 2 As the cooperation between OLAF and the EPPO has already been outlined above, only the most relevant aspects will be briefly reiterated here (see Part B, Chapter 4). For a detailed discussion on the commencement and conclusion of pre-trial proceedings in EPPO cases in the Czech Republic, see the chapters on Arts 26–28 EPPO Regulation. Investigative measures are addressed in Arts 30 and 33, while cross-border cooperation is examined in Arts 31 and 32 (all in Part B).
- 3 The mechanisms for **reporting to the EPPO** are straightforward: OLAF has signed a Working Agreement with the EPPO, and both Art 12e OLAF Regulation and Art 101 EPPO Regulation establish the framework for cooperation between the two authorities. These provisions should be considered by OLAF officials, AFCOS staff and seconded national experts acting on behalf of EPPO requests. This process, however, does not prejudice OLAF’s solely administrative nature.
- 4 OLAF possesses significant resources and access to databases that may not be available to the EPPO or provided by entities engaged in combating administrative fraud.
- 5 This highlights the critical importance of OLAF’s cooperation in supporting EPPO operations. According to Union law, including the OLAF and EPPO Regulations and the Working Arrangement, OLAF is expected to assist the EPPO by leveraging its established and enduring connections with national authorities in the customs and tax sectors. OLAF serves as the EPPO’s primary point of contact with these authorities.
- 6 This role requires OLAF **to maintain relationships with its national partners and act on behalf of the EPPO when submitting requests**. The EPPO’s administrative staff and case analysts may also collaborate with OLAF to ensure information is transmitted

⁵³⁶ National Strategy on the Protection of the Financial Interests of the EU 2024, p. 10.

securely and in compliance with the rules outlined in the regulations and the Working Arrangement. In practice, OLAF will often liaise with a national AFCOS, such as the Czech Republic's AFCOS, to obtain the necessary information at the local level. (see above Art 12 OLAF Regulation)

[Article 12f–g omitted]

4. Article 13 Cooperation of the Office with Eurojust and Europol

1. [...] Where this may support and strengthen coordination and cooperation between *national investigating and prosecuting authorities*, or where the Office has forwarded to the competent authorities of the Member States information giving grounds for suspecting the existence of fraud, corruption or any other illegal activity affecting the financial interests of the Union in the form of serious crime, it shall transmit relevant information to Eurojust, within the mandate of Eurojust. [...]

- 1 The Czech Ministry of Finance, through its AFCOS Department, published information regarding the Schengen Information System, highlighting that the Czech Republic, under s. 36 of the Act on International Judicial Cooperation in Criminal Matters, can engage in such matters via its national representative at Eurojust.
- 2 This provision regulates the acquisition of information by authorities involved in criminal proceedings from the Schengen Information System. It also enables the national member of the Czech Republic at Eurojust, along with their representative and assistant, to access records made in the Schengen Information System, including details on items and shipments searched for the purposes of seizing or confiscating.⁵³⁷
- 3 The Czech representative at Eurojust plays a pivotal role in assisting OLAF and the Czech AFCOS with the acquisition of relevant information. This official is listed on the **Eurojust website**.

[Article 14–17 omitted]

⁵³⁷ National Strategy on the Protection of the Financial Interests of the EU 2024, p. 23.

Bibliography

- AFCOS (2020) *Zpráva o činnosti CKB AFCOS za rok 2020*. Czech Ministry of Finance, Prague.
- Ambos K, Duff A, Heinze A et al. (2022) *Core Concepts in Criminal Law and Criminal Justice*. Volume II. Cambridge University Press, Cambridge, pp. 57–94.
- Bachmaier Winter L (2024) ‘The Quest for Evidentiary Rules in EU Cross-Border Criminal Proceedings: Electronic Evidence, Efficiency and Fair Trial Rights.’ In: Lorena Bachmaier Winter L (ed) *Admissibility of Evidence in EU Cross-Border Criminal Proceedings: Electronic Evidence, Efficiency and Fair Trial Rights*. Bloomsbury, London, pp. 1–29.
- Bartsiotas G A, Achamkulangare G (2016) *Fraud Prevention, Detection and Response in United Nations System Organizations*. UN Publications Office, New York.
- de Bellis M (2021) ‘Multi-level Administration, Inspections and Fundamental Rights: Is Judicial Protection Full and Effective?’. *GLJ*, 22(3) pp. 416–446.
- Bobek M (2013) *Comparative Reasoning in European Supreme Courts*. OUP, Oxford.
- Bohlander M (2009) *Principles of German Criminal Law*. Hart Publishing, London, pp. 29 et seq.
- Borčevský P (2024) ‘Několik poznámek k možnosti konfrontace znaleců v trestním řízení’. *Kriminalistika*, 57(4), pp. 267–280.
- Bovend’Eerdt K H P (2024) *The Protection of Fundamental Rights in OLAF Composite Enforcement Procedures*. Springer, Berlin.
- Bovend’eerdt K H P (2018) *The Applicable Law in OLAF’s On-The-Spot Inspections*. Blog Post, 28 June 2018. <https://europeanlawblog.eu/2018/06/28/the-applicable-law-in-olafs-on-the-spot-inspections/>. Accessed 31 May 2025.
- Brüner F H (2001) ‘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*. Bundesanzeiger Verlag, Köln, pp. 17–26.
- Brüner F H (2008) ‘OLAF-Reform II – Kosmetischer Eingriff oder Großer Wurf?’ *Europarecht*, 43(6), pp. 859–872.
- Brüner F H et al. (2009) *OLAF-Manual of Operational Procedures*. Brussels, EU Commission.

- 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*, No 3, pp. 20–35, https://www.europedeslibertes.eu/app/uploads/2021/04/2-European-Public-Prosecutor_Callawaert-Eur-RL-202113.pdf. Accessed 31 March 2025.
- 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 May 2025.
- Child J J, Simester A P, Spencer J R et al. (2022) *Simester and Sullivan’s Criminal Law: Theory and Doctrine*, Chapter 4 et seq. Bloomsbury Publishing, London.
- Czech Ministry of Finance (2020) Národní strategie ochrany finančních zájmů EU platná od 1. 5. 2020. Czech Ministry of Finance, Prague.
- Dědič J (2018) ‘§ 2’. In: Šámal P, Dědič J, Gřivna T, Pury F and Říha J. *Trestní odpovědnost právnických osob*. 2nd edition. C. H. Beck, Prague, pp. 89–90.
- Dobeš P (2023) ‘§ 34e’, ‘§ 34g’. In: Bradáčová L et al. *Zákon o státním zastupitelství*. 1st edition. C. H. Beck, Prague, pp. 582–586, 587–590.
- Drašík A et al. (2017) *Trestní řád: komentář*. 2 volumes. Wolters Kluwer, Prague.
- Dvořák M (2022) *Rekognice osob v trestním řízení*. Leges, Prague.
- ECA (2022) ‘Cohesion and NextGenerationEU: Concord or Clash?’. *ECA Journal*, 1, https://www.eca.europa.eu/Lists/ECADocuments/JOURNAL22_01/JOURNAL22_01.pdf. Accessed 31 May 2025.
- ECJ (2020) *Research Note: Impact of ongoing criminal proceedings on the conduct of disciplinary proceedings*, online: https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-09/ndr_2020_001_neutralisee_en.pdf. Accessed 31 May 2025.
- Eser A (1987) *Justification and Excuse: A Key Issue in the Concept of Crime. Rechtfertigung und Entschuldigung: Ein Schlüsselproblem des Verbrechensbegriffs*. n/a, Freiburg im Breisgau, online: <https://d-nb.info/112342229X/34>. Accessed 31 May 2024, pp. 17–65.
- Esser R (2023) ‘Transnationalität der Strafverfolgung durch die EUStA als Herausforderung für die Strafverteidigung’. In: Niedernhuber T (ed) *Die neue Europäische Staatsanwaltschaft*. Nomos, Berlin, pp. 89–126.

- European Commission (2009) *Information Note on Fraud Indicators for ERDF, ESF*, https://ec.europa.eu/regional_policy/en/information/publications/cocof-guidance-documents/2009/information-note-on-fraud-indicators-for-erdf-esf-and-cf. Accessed 31 March 2025.
- European Commission (2013) Guidance note on main tasks and responsibilities of an Anti-Fraud Co-ordination Service (AFCOS). [https://poise.portugal2020.pt/documents/10180/19827/Guidance+Note+on+Main+Tasks+and+Responsibilities+of+an+Anti-Fraud+Coordination+Service+\(AFCOS\).pdf/0c438f5b-8056-4aa7-ae37-fl3fef5f4ba8](https://poise.portugal2020.pt/documents/10180/19827/Guidance+Note+on+Main+Tasks+and+Responsibilities+of+an+Anti-Fraud+Coordination+Service+(AFCOS).pdf/0c438f5b-8056-4aa7-ae37-fl3fef5f4ba8). Brussels. Accessed 31 March 2025.
- European Commission (OLAF) (2011) *Compendium of Anonymised Cases Structural Actions*, https://www.italy-albania-montenegro.eu/sites/default/files/2023-01/05_OLAF_Compendium_of_anonymised_cases_2011.pdf. Accessed 31 March 2025.
- European 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 May 2025.
- European Commission (OLAF) (2016) *Guidelines on Digital Forensic Procedures for OLAF Staff of 15 February 2016*, online: https://anti-fraud.ec.europa.eu/system/files/2021-07/guidelines_en_bb84583638.pdf. Accessed 31 March 2025.
- European Commission (OLAF) (2017a) 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*. https://antifraud-knowledge-centre.ec.europa.eu/guidance-legislation/handbooks_en. Accessed 31 March 2025.
- European Commission (OLAF) (2017b) *Fraud in Public Procurement: A Collection of Red Flags and Best Practices*, Ref. Ares(2017)6254403 – 20/12/2017, <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 March 2025.
- European Commission (OLAF) (2018) 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 March 2025.

Bibliography

- European Commission (OLAF) (2021) *Guidelines on Investigation Procedures for OLAF Staff*. Ref.Ares(2021)6071905 – 6/10/2021, online: https://anti-fraud.ec.europa.eu/system/files/2021-10/gip_2021_en.pdf. Accessed 31 March 2025.
- European 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 to the 33rd Annual Report on the protection of the European Union's financial interests and, the Fight against fraud – 2021. SWD(2022) 304 final. Publications Office of the European Union, Luxembourg.
- European Commission (OLAF) (2022b) *33rd Annual Report on the Protection of the European Union's financial interests and the Fight against fraud – 2021*. COM(2022) 482 final. Publications Office of the European Union, Luxembourg.
- European Commission (OLAF) (2022c) *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 to the 33rd Annual Report on the protection of the European Union's financial interests and the fight against fraud – 2021. SWD(2022) 307 final. Publications Office of the European Union, Luxembourg. Accessed 31 March 2025.
- European Commission (OLAF) (2024) *35th Annual Report on the Protection of the European Union's financial interests and the Fight against fraud – 2023*. Publications Office of the European Union, Luxembourg.
- European Court of Auditors (2019) *Delivering performance in Cohesion, Briefing Paper*. EU Publications Office, Luxembourg, online: https://www.eca.europa.eu/Lists/ECADocuments/BRP_Performance_orientation_in_Cohesion/BRP_Performance_orientation_in_Cohesion_EN.pdf. Accessed 31 March 2025.
- European Court of Human Rights (2023) *Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (criminal limb)*. Council of Europe Publishing, Strasbourg, online: https://www.echr.coe.int/documents/d/echr/guide_art_6_criminal_eng. Accessed 31 May 2025.
- European Parliament (2022) P9_TA(2022)0300 Protection of the European Union's financial interests – combating fraud – annual report 2020. Resolution of 7 July 2022 on the protection of the European Union's financial interests – combating fraud – [2021/2234(INI)], https://www.europarl.europa.eu/doceo/document/A-9-2022-0175_EN.html. Brussels.

- European Public Prosecutor's Office (2022a) *EPPO Annual Report 2021*, online: https://www.eppo.europa.eu/sites/default/files/2022-03/CH2.6_EPPO-Annual-Report-2021-CZ.pdf. Accessed 31 March 2025.
- European Public Prosecutor's Office (2022b) *One year in action*. [YouTube] <https://www.youtube.com/watch?v=v2oUUyTEPFU>. Accessed 31 May 2025.
- European Public Prosecutor's Office (2022c) *Oznámení České republiky podle článku 117 nařízení Rady (EU) 2017/1939*, online: <https://www.eppo.europa.eu/sites/default/files/2022-02/220119%20Updated%20Notification%20of%20the%20Czech%20Republic%20to%20Art%20117%20and%20Annex.pdf>. Accessed 31 May 2025.
- European Public Prosecutor's Office (2023) *EPPO Annual Report 2022*, online: https://www.eppo.europa.eu/sites/default/files/2023-03/8%20EPPO%202022%20Annual%20Report%20EN_CZ.pdf. Accessed 31 May 2025.
- European Public Prosecutor's Office (2024) *Annual EPPO Report 2023*, online: https://www.eppo.europa.eu/sites/default/files/2024-03/EPPO_Annual_Report_2023.pdf. Accessed 31 May 2025.
- European Public Prosecutor's Office (2025) *EPPO Annual Report 2024*, online: https://www.eppo.europa.eu/assets/annual-report-2024/pdfs/EPPO_Annual_Report_2024_en.pdf. Accessed 31 March 2025.
- Farkas Á, Dannecker, G, Jacsó J (eds) (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 Hungary, Budapest.
- FCPA (2012) A Resource Guide to the FCPA U.S. Foreign Corrupt Practices Act. Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, Washington.
- Federal Ministry Republic of Austria (2022) *Anti Fraud Coordinators*. “*Betrugsbekämpfungskoordinator:innen*”, online: <https://www.bmf.gv.at/en/topics/combating-fraud/anti-fraud-units/anti-fraud-coordinators.html>. Accessed 31 May 2025.
- Frischmann P (2021) ‘Laický soudce – historický relikt či funkční garant pracovněprávní ochrany?’. *Fórum sociální politiky*, vol. 5, p. 30–34.
- Furek A et Jirovec T (2016) ‘§ 3’. In: Furek A, Rothanzl L et Jirovec, T. *Zákon o svobodném přístupu k informacím*. 1st edition. C. H. Beck, Prague, pp. 166–236.
- Garamvölgyi B et al. (2020) ‘Admissibility of Evidence in Criminal Proceedings in the EU’, *Eucrim*, 15(3), pp. 201–208.

Bibliography

- Gellert L (2009) ‘Gerichtliche Verwertbarkeit von Protokollen und Missionsberichten des OLAF’. *Außenwirtschaftliche Praxis (AW-Prax)*, 14(1), pp. 85–88.
- Gialuz M (2023) ‘Indagini transfrontaliere e prova nel Regolamento EPPO’. *Eurojus – Rivista di Diritto dell’Unione Europea*, 2, pp. 156–171.
- Gřivna T (2019) ‘Právo na obhajobu v řízení vedeném úřadem evropského veřejného žalobce’. *Acta Universitatis Carolinae – Iuridica*, 65(4), pp. 59–64.
- Grodzev D et Dianese G (2022) ‘Criminal and Administrative Procedures in Protecting the Financial Interests of the EU’. *Eucrim*, 17(4), pp. 279–282.
- Guerra J E (2021) ‘The Material Competence of the EPPO and the Concept of Inextricably Linked Offences’. *Eucrim*, 16(1), pp. 49–50.
- Gut T (2023) ‘EPPO’s material competence and its exercise: a critical appraisal of the EPPO Regulation after the first year of operations’. *ERA Forum*, 23, pp. 283–300.
- Harding C, Franssen V (eds) (2022) *Criminal and Quasi-criminal Enforcement Mechanisms in Europe: Origins, Concepts, Future*. Bloomsbury Publishing, London.
- 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 2026 – 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 2026 – b) *The OLAF Regulation: A Commentary on the Regulation Concerning Investigations Conducted by the European Anti-Fraud Office (OLAF)*. Edward Elgar, Cheltenham.
- Hendrych L (2021) ‘Problematické aspekty Úřadu evropského veřejného žalobce v českém kontextu’. *Státní zastupitelství*, 18(2), pp. 9–18.
- Hendrych L (2025) *Úřad evropského veřejného žalobce*. Wolters Kluwer, Praha.
- Herrnfeld H-H (2023) ‘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*, 18(4), pp. 370–379.
- Herrnfeld H-H, Brodowski, D, Burchard, C (2021) *European Public Prosecutor’s Office: Regulation (EU) 2017/1939 Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutors’s Office (‘the EPPO’): Article-by-Article Commentary*. Nomos, Baden-Baden.

- Holländer, P (2017) ‘Zrod a současnost principu *nemo tenetur se ipsum prodere* (hypotéze jednoho základního práva)’. *Právník*, 156(2), pp. 89–113.
- House of Lords (2013) *The Fight Against Fraud on the EU’s Finances – 12th Report of Session 2012–13*. The Stationery Office Limited, London, pp. 32 et seq.
- Jelínek J (ed) (2016) *Základní zásady trestního řízení – vůdčí ideje českého trestního procesu*. Leges, Prague.
- Jelínek J (2018) ‘Evropský veřejný žalobce v evropském prostoru’. *Kriminalistika*, 51(1), pp. 59–74.
- Jelínek J (2019) *Trestní odpovědnost právnických osob: Problémy a perspektivy*. Leges, Prague.
- Jelínek J (2020) ‘Evropský veřejný žalobce v českém trestním procesu’. *Kriminalistika*, 53(2), pp. 83–94.
- Jelínek J (2020) ‘K otázkám prostorového odposlechu v trestním řízení a jeho chybějící právní úpravě v českém trestním řádu’. In: Jelínek J, Pelc V et al. *Ochrana základních práv a svobod v trestním řízení*. Leges, Prague, pp. 29–42.
- Jelínek J, Klíma K (eds) (2020) *Protection of Fundamental Rights and Freedoms in Criminal Procedure*, Leges, Prague, online: https://www.prf.cuni.cz/sites/default/files/uploads/files/Protection%20of%20fundamental%20rights_EPUB.pdf.
- Jelínek J, Pelc V et al. (2020) *Current Tendencies in Criminal Law of the European Union*. Wolters Kluwer Hungary, Budapest.
- Jelínková J, Tuháček M (2019) *Zákon o svobodném přístupu k informacím*. 2nd edition. Wolters Kluwer, Prague.
- Kallab J (1915) *Zločin a trest: Úvahy o základech trestního práva*. Jos. R. Vilímek, Prague.
- Kerschbaummayr P (2024) ‘Grenzüberschreitende Ermittlungen durch die EUStA: Eine Analyse der E C-281/22’. *ÖJZ*, 10, pp. 632–637.
- Klement P (2021) ‘Reporting of Crime Mechanisms and the Interaction between the EPPO and OLAF as Key Future Challenges’. *Eucrim*, 16(1), pp. 51–52.
- Klement P (2023) ‘K některým aspektům přeshraniční spolupráce EPPO’. *Státní zastupitelství*, 20(3), pp. 25–31.
- Koupil V (2023) ‘Působnost EPPO v oblasti daňových trestných činů’. *Státní zastupitelství*, 20(3), pp. 42–46.
- Kövesi L, “So kommt die EU im Kampf gegen die Kriminalität in die Offensive”. *Die Welt*, 5 July 2022. <https://www.welt.de/debatte/kommentare/article239196661/>

- So-kommt-die-EU-im-Kampf-gegen-die-Kriminalitaet-in-die-Offensive.html. Accessed 31 March 2025.
- Kuhl L (2019) ‘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, pp. 135–160.
- Kühn Z (2005) *Aplikace práva ve složitých případech: k úloze právních principů v judikatuře*. Karolinum, Prague.
- Lewis C T, Short C (1891) *A New Latin Dictionary*. Harper & Brother Publishers, New York.
- Lichnovský O, Ondrýšek R et al. (2024) *Daňový řád*. 5th edition. C. H. Beck, Prague.
- Ligeti K (2024) ‘The Independence of the EPPO in Question: The ECJ’s Judgment in C-281/22 G.K. and Others (Parquet européen)’. *Eucrim*, 19(1), pp. 66–71.
- Logesová J, Ottová T, Pumr J (2023) ‘Kickbacks’. In: Pietr M and Søreide, T. (eds.) *Elgar Concise Encyclopaedia on Corruption*. Elgar Publishers, London, pp. 301–305.
- Luchtman M (2022) ‘Setting the Scence. The Rise of EU Law Enforcement Authorities’. In: Luchtman M, Ligeti K, Vervaele J (eds) *EU Enforcement Authorities: Punitive Law Enforcement in a Composite Legal Order*. Hart Publishing, Bloomsbury, London, pp. 7–31.
- Luchtman M, Vervaele J (eds) (2017) *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.
- Malan J (2022) ‘Patterns of fraud in EU funds under shared management – similarities and differences between Member States’. https://www.eca.europa.eu/Lists/ECA/Documents/JOURNAL19_02/JOURNAL19_02.pdf. *ECA Journal*, No 2, pp. 135–139. Accessed 31 March 2025.
- Malan J, Bosch C I et al. (2021) *Impact of Organised Crime on the EU’s Financial Interests*, PE 697.019 – July 2021, EU Publications Office, Brussels, [https://www.europarl.europa.eu/ReData/etudes/STUD/2021/697019/IPOL_STU\(2021\)697019_EN.pdf](https://www.europarl.europa.eu/ReData/etudes/STUD/2021/697019/IPOL_STU(2021)697019_EN.pdf). Accessed 31 March 2025.
- Malan J, Bosch C I (2022) *Possible Solutions for Missing Trader Intra-Community Fraud*, PE 731.902 – June 2022, online: <https://www.europarl.europa.eu/RegDa>

- ta/etudes/STUD/2022/731902/IPOL_STU(2022)731902_EN.pdf. Accessed 31 March 2025.
- Malý K (2003) ‘Královská prokuratura’. In: Malý, K et al. *Dějiny českého a československého práva do roku 1945*. Linde, Prague, pp. 66–67.
- Mayer-Koukol P, Rebisant L ‘36. Die Strafverfolgungsbehörden und die (neue) Europäische Staatsanwaltschaft’. In: Hofbauer B, Heid S, Beham M P (eds) *Handbuch Vergabe-Compliance*. Verlag Österreich, Wien, pp. 1007–1015.
- Mosna A (2024) ‘Effective Judicial Protection as a Central Issue in EPPO Cross-Border Investigations: The ECJ’s First Ruling in *G. K. and Others*’. *Common Market Law Review*, 61(5), pp. 1345–1366.
- Musil J (2009) ‘Zákaz k donucování k sebeobviňování (nemo tenetur se ipsum accusare)’. *Kriminalistika*, 42(4), pp. 252–264.
- Náhlovská L (2020) ‘Veškeré úsilí právnické osoby a možnost otočení důkazního břemene’ In: Tlapák Navrátilová J, Galovcová I et al. *Pocta Jiřímu Jelínkovi*. Leges, Prague, pp. 247–255.
- Neumann L (2022) ‘The EPPO’s Material Competence and the Misconception of „inextricably linked offences”’. *EuCLR*, 12(3), pp. 235–263.
- Novák M (2023) ‘Ohlášení trestného jednání v působnosti EPPO – jeho význam a důsledky’. *Státní zastupitelství*, 20(3), pp. 22–24.
- Odehnalová J (2020) ‘Zásada zákazu nucení k sebeobviňování v judikatuře Ústavního soudu’. In: Jelínek J, Pelc V et al. *Ochrana základních práv a svobod v trestním řízení*. Leges, Prague, pp. 113–125.
- OECD (2019) *Fraud and Corruption in European Structural and Investment Funds. A Spotlight on Common Schemes and Preventive Actions*. <https://web-archive.oecd.org/2019-10-08/532421-prevention-fraud-corruption-european-funds.pdf>. OECD Publishing, Paris. Accessed 31 March 2025.
- OLAF (2021) *OLAF Guidelines on Data Protection for Investigative Activities*, Ref.Ares(2021)7266396 – 25/11/2021. OLAF, Brussels.
- OLAF (2022a) *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 May 2025.
- OLAF (2022b) *The OLAF Report 2021*. Publications Office of the European Union, Luxembourg.

- OLAF (2022c) *List of rulings of the Court of Justice of the EU concerning OLAF*, online: https://anti-fraud.ec.europa.eu/about-us/legal-background/list-rulings-court-justice-eu-concerning-olaf_en. Accessed 31 May 2025.
- Oshidari B (2018) ‘Die Europäische Staatsanwaltschaft’. *Journal für Strafrecht*, 5(3), pp. 193–201.
- Otto J (1903) (ed) *Ottův slovník naučný: illustrovaná encyklopaedie obecných vědomostí. 20. sv. Pohora-Q.v.* Volume XX. J. Otto, Prague.
- Ottová T (2022a) Dohoda o vině a trestu jako deontologická výzva. In: Krzyžanková K et al. *Integrující úloha lidských práv v současném právu*. Auditorium, Prague, pp. 311–330.
- Ottová T (2022b) ‘Epistemologická úskalí hodnocení znaleckého posudku: Formálně, či materiálně?’ In: Knoll V, Hablovič J et al. *Naděje právní vědy 2021*. Western Bohemian University, Pilsen, pp. 567–575.
- Van der Paal J, Nurk A et al. (2019) *Protection of EU financial interest on customs and VAT: Cooperation of national tax and customs authorities to prevent fraud*, PE 636.470 – March 2019, European Parliament, Brussels, online: [https://www.europarl.europa.eu/ReData/etudes/STUD/2019/636470/IPOL_STU\(2019\)636470_EN.pdf](https://www.europarl.europa.eu/ReData/etudes/STUD/2019/636470/IPOL_STU(2019)636470_EN.pdf). Accessed 31 March 2025.
- Pelc V (2021) *Krajní nouze v trestním právu*. Leges, Prague.
- Pelc V (2023) ‘Koncept kontradiktornosti v trestním řízení’. *Acta Universitatis Carolinae – Iuridica*, 69(3), pp. 7–20.
- Poslanecká sněmovna Parlamentu České republiky (2024) ‘Sněmovní tisk 630’. Available at: <https://www.psp.cz/sqw/historie.sqw?o=8&t=630>. Accessed 10 January 2025.
- Quirke B (2015) ‘EU fraud and new member states – a success story? The Case of Bulgaria’. In: Walle G V, van Erp J, Huisman W (eds) *The Routledge Handbook of White-Collar and Corporate Crime in Europe*. Taylor & Francis, London.
- Ráliš P (2024) ‘Zásada „nemo tenetur se ipsum accusare“ a moderní technologie’. *Kriminalistika*, 57(2), pp. 113–127.
- Ramos V C (2023) ‘The EPPO and the equality of arms between the prosecutor and the defence’. *New Journal of European Criminal Law*, 14(1), pp. 43–70.
- Robertson C D, Aodha M M (2023) ‘Legal terminology of the European Union’. In: Kockaert H J, Steurs F (eds) *Handbook of Terminology Online*, Volume 3, <https://doi.org/10.1075/hot.3.leg2>. Accessed 31 March 2025, pp. 244–270. John Benjamins Publishing Company, Amsterdam.

- Rozehnal T (2024) *Daňový řád*. 3rd edition. Wolters Kluwer, Prague.
- Růžička M (2023) ‘K některým otázkám postavení a fungování Úřadu evropského veřejného žalobce v českém trestním procesu’. *Trestněprávní revue*, 22(2), pp. 63–74.
- Sacchetto E (2024) ‘La Corte di giustizia si pronuncia sul primo rinvio pregiudiziale in materia di indagini transfrontaliere condotte dalla procura europea: un passo avanti per la cooperazione giudiziaria in materia penale’. *Rivista*, 11(2), pp. 156–171.
- 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/>. Accessed 31 March 2025.
- Šámal P et al. (2023) *Trestní zákoník: komentář*. 3rd edition. 3 volumes. C.H. Beck, Prague.
- Saporta G, Maraney S (2022) *Practical Fraud Prevention: Fraud and AML Analytics for Fintech and eCommerce, Using SQL and Python*. O’Reiley Media Inc., Sebastopol, California.
- Sarasúa O V (2023) ‘The Right to a Defence and to a Fair Trial under the Proceedings of the European Public Prosecutor’s Office: Do the Choice of Forum Rules Effectively Safeguard the Principles of Equality of Arms and Legal Certainty?’ In: Rodrigues A M, Martín A N, Sánchez M A, Costa M J (eds) *Procuradoria Europeia e Criminalidade Económico-Financeira*. FDUC, Coimbra, pp. 365–401.
- Ščerba F et al (2020) *Trestní zákoník: komentář*. C.H. Beck, Prague.
- Scharf-Kröner C, Seyderhelm J (2019) ‘OLAF Investigations Outside the European Union – Practical and Legal Aspects’. *Eucrim*, 3, pp. 209–218.
- Schelle K (2008) ‘Veřejná žaloba v historických souvislostech’. *Státní zastupitelství*, 6(11–12), pp. 44–53.
- Schrömbges U, Wenzlaff O (2011) ‘Doubts regarding the origin of goods based on OLAF mission reports vs protection of confidence.’ *World Customs Journal*, 5(1), pp. 86–95.
- Šelleng D (2018a) ‘Trestní odpovědnost právnických osob začleněných do koncernu – 1. část’. *Bulletin advokacie*, 4, pp. 39–42.
- Šelleng D (2018b) ‘Trestní odpovědnost právnických osob začleněných do koncernu – 2. část’. *Bulletin advokacie*, 5, pp. 35–38.
- Ševčík P (2023) ‘§ 28’. In: Ševčík P, Malast J, Poláček B. *Zákon o znalcích, znaleckých kancelářích a znaleckých ústavech*. Wolters Kluwer, Prague, pp. 177–180.

- Sotolář A, Růžička M (2022) *Evropský veřejný žalobce. Řízení o trestných činech proti finančním zájmům Evropské unie. Komentář k nařízení Rady (EU) č. 2017/1939*. C.H. Beck, Prague.
- Spink J W (2019) *Food Fraud Prevention: Introduction, Implementation, and Management*. Springer, Berlin and Heidelberg.
- Stasi A (2021) *General Principles of Thai Criminal Law*. Springer, Singapore, pp. 31–47.
- Šťastný O (2022) ‘Rozhovor s evropským žalobcem Petrem Klementem’. *Státní zastupitelství*, 11(1), pp. 5–8.
- Terhechte J P (2020) ‘Nationale Gerichte und die Durchsetzung des EU-Rechts’. *Euro-parecht*, 55(6), pp. 569–604.
- Türk A H, Rowe G C, Hofmann H C H (2018) ‘A Conceptual Understanding of EU Administrative Law’. In: Türk A H, Rowe G C, Hofmann H C H (eds) *Specialized Administrative Law of the European Union. A Sectoral Review*. OUP, Oxford, pp. 3–13.
- UNDOC (2023) *Resolutions and decisions adopted by the Conference of the States Parties to the United Nations Convention against Corruption*. UN Publications Office, New York, online: <https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html>. Accessed 31 May 2025.
- Unger B, Ferwerda J, Rossel L (eds) (2021) *Combating Fiscal Fraud and Empowering Regulators*. OUP, Oxford.
- Vangeli B (2014) ‘§ 62’. In: Vangeli B. *Zákon o Policii České republiky*. 2nd edition. C. H. Beck, Prague, pp. 254–255.
- Vetešník P (2021) ‘§ 18’. In: Jemelka L, Vetešník P, Libosvár O. *Zákon o kontrole*. 2nd edition. C. H. Beck, Prague, pp. 219–222.
- de Vries A J (2022) ‘Enforcement of Policies against illicit trade in tobacco products in the Netherlands’. In: Vervaele A E J, Tosza S (eds) *Combating Illicit Trade in Tobacco Products In Search of Optimal Enforcement*. Springer, Heidelberg and Berlin, pp. 401–463.
- Walczyk J, Dotti, N F (2023) ‘Financial compliance in Cohesion Policy: how to protect the EU financial interests from domestic fraud’. *Journal of Contemporary European Research*, 19(1), pp. 4–22. London, Routledge.
- Wells J T (2014) *Principles of Fraud Examination*. 4 edn. Wiley, Hoboken.

- World Customs Organization. *List of Partner Organizations*, online. http://www.wcoomd.org/en/about-us/partners/international_organizations.aspx. Accessed 31 May 2025.
- Wouters J (2020) ‘The EU’s engagement with its Member States on human rights’. In: Wouters J, Nowak M, Chane A-L, Hachez L (eds) *The European Union and Human Rights: Law and Policy*. OUP, Oxford, pp. 132 et seq.
- Zerbes I (2022) ‘Grenzüberschreitende Beweiserhebung der Europäischen Staatsanwaltschaft: Supranationale Ermittlung nach nationalen Regeln’. *ÖJZ*, no. 23–24, pp. 1193–1201.
- Zimmermann F (2023) ‘Die Zuständigkeit der EUStA im Ermittlungsverfahren und der Grundsatz „ne bis in idem“’. In Niedernhuber T (ed) *Die neue Europäische Staatsanwaltschaft*. Nomos, Berlin, pp. 21–37.

* For reasons of brevity, the European Commission is abbreviated to EU Commission and the European Court of Human Rights to ECtHR in the footnotes.

Index

- access to documents 42, 115
- accused 97, 103, 256, 258, 293
- accused person's habitual residence 79
- Act No 106/1999 on Free Access to Information 50, 70, 361
- Act No 34/2023 Coll., on the Coordination of Cooperation with OLAF 356
- Act No 500/2004 Coll. Administrative Code 371
- administrative act 390
- Administrative Cooperation Agreements 349
- administrative procedure 371
- AFCOS 350, 407
 - of each Member State 412
 - SharePoint 363
- AFCOS Central Contact Point of the
 - Czech Republic 391
 - Central Contact Point 291
- amnesty 195
- Anti-Fraud Knowledge Centre 135
- appeal against the decision on detention 306
- area of structural funds 364
- arrest 210, 292, 361
- arrest warrant 211, 294, 297, 298
- attempt 124, 125
- audited person 388
 - rights of the 388
- authorities involved in criminal proceedings 37, 75, 116, 182, 208, 220, 230, 269
 - court 100, 104, 186
 - law enforcement agency 272
 - public prosecutor 215, 216, 229, 244, 287, 308
- bank account or traffic data 229
- bank secrecy 233, 400
- banking secrecy [bankovní tajemství] 190
- carousel frauds 139
- Case Management System 96
- Centrální kontaktní bod AFCOS 391
- Charter of Fundamental Rights and Freedoms 99, 200
- Charter of Fundamental Rights of the European Union 36
- classified information 189
- closer cooperation 73
- cohesion fund fraud 136
- Collection of Judgments and Resolutions of the Constitutional Court 47
- Collection of Judicial Decisions of the Supreme Court 47, 48
- competent authorities
 - Art. 27 EPPO Regulation 147
- complaint 92, 93
- computer data 228
- confidentiality 360
 - obligation to maintain 195, 361
- Constitution 65
- Constitutional Court 68
- constitutional guarantees 203
- consular office 298
- convicted person 103
- coordination 422
- corruption 132, 350, 353, 368, 391, 403, 405
- court

- an authority involved in criminal proceedings 45, 231, 232, 255
- bench 61, 62, 63
- constitutional judge 186
- judge 186, 191, 193, 200, 206, 421
- judge sitting alone 60, 61, 153
- presiding judge 210, 215, 216, 219, 223
- territorial jurisdiction 54, 57, 381
- COVID-19 pandemic 138
- creditor's rights in seizure proceedings 221
- criminal complaints 90
- criminal investigation 157
 - temporary suspension of 157
- criminal liability 125
 - of legal persons 81, 129
 - of natural persons 383
- criminal offence 82, 85, 87, 92, 94, 108, 119, 121, 125, 135, 138, 153, 160, 186, 234, 238
 - felony 233, 303, 315
 - misdemeanour 123, 166, 184, 303
 - particularly serious felony 315
- criminal penalties 132
- cross-border investigations 200
- custody 294
 - legal conditions 299
 - maximum allowable duration 302
 - on remand 34, 104, 123, 306
 - priority and speed 301
 - release 304
 - time thresholds 302
 - without charge 183, 185, 294, 305
- custody of documents 367
- custody on remand 39, 60, 150, 306
- customs investigation 375
- Czech Bar Association 106, 107, 190
- Czech Ministry of Industry and Trade 369
- damage to the financial interests of the European Union 140, 322
- defence counsel 106
 - mandatory 111, 112, 164
 - of choice 110
 - rights and duties 113
- detained foreign national 103
- detention 295
- duty of confidentiality 190, 191, 194, 232
- dwelling 200
 - inviolability of a 246
 - legal definition of 206
 - search of a 249
- Economic Operator 370
- embezzlement 311
- EPPO 74
 - Internal Rules on Procedure 94
- equality of conditions 75, 202
- European Arrest Warrant 292, 307
- European Structural and Investment Funds 391
- evidence 421
 - assesment of collected 378
 - digital forensic 398
 - evaluation of 378
 - gathered 382
 - physical 220
 - secure 296
 - supporting (from OLAF) 376
- evidentiary purposes 213
- Evropský úřad pro boj proti podvodům
See OLAF
- examination 255, 263, 264, 265, 267, 270, 272, 274, 275
 - expert 229, 277
 - judicial 289
- exculpation 130
- expert
 - office 270, 272

- opinion 272, 273, 274, 277
- extraordinary appeal [dovolání] 159
- factual circumstances 300
- felonies 123
- Financial Analytical Office [Finanční analytický úřad] 222
- financial control 393
- Financial Inspection Act 390
- for purely domestic cases 290
- fraud 312
 - caousel 136
 - expenditure 136
 - non-procurement 136
 - procurement 136
 - subsidy 136
 - VAT revenue 136
- freezing
 - order 220
- fugitive 108
- general principles of criminal liability 133
- Head of the Chamber of Deputies 67
- Head of the Senate 186
- Hussite Movement 73
- indictment 162, 178, 202, 231, 244, 303, 415
 - filing of 176
- inextricable link 134
- initial administrative assessment 390
- initiation of criminal prosecution 75
- Inspection Code 391
- inspection of immovable property 219
- Internal Rules of Procedure 94
- international sanctions 222
- interrogation 151
 - first 257
 - of a witness 189
 - of the accused 266
 - prohibition of 189
 - via videoconference 290
- investigation
 - end of 116
- investigation measures
 - surveillance of persons and things 245
 - tracking of people and things 245
 - use of an agent 247
- judicial authorisation 200
- judicial authority 307
- Kingdom of Bohemia 73
- law enforcement agency 153, 157
- legal assistance 113
- legal persons
 - criminal liability 128
- legal privilege 191
- Legal Profession Act 107
- legal professional privilege 252
- mandatory defence 306
- means of operational search 203
- Ministry of Finance 233
 - Central Contact Point AFCOS 355
- Ministry of Finance, Division 4703 (Division 47) 391
- misdemeanours 123
- monitoring of bank accounts 229
- mutual assistance 404
- national case file 115
- National Coordination Authority 392
- National Headquarters Against Organized Crime of the Criminal Police and Investigation Service (NCOZ) 137
- National Legal Heritage 49
- National Recovery Plan 2021–2026 350
- negligence 129
- nemo tenetur se ipsum accusare 102, 187, 188, 189
- non-residential premises 203
 - search of 203

- objective elements 119
 - of the crime 119
- obligation of confidentiality 190
- official record of explanation 256
- OLAF
 - role 350
- OLAF Regulation 348
 - definitions 354
 - irregularity, term 354
- on-the-spot checks 368
- opening of the shipment 241
- Operational Programme of the Ministry for Regional Development of the Czech Republic 141
- pardon 194
- Parquet européen 288
- particularly serious felony 315
- Permanent Chamber 149
 - prior approval from 86
- personal liberty 293, 295, 297
- plea agreement 103
- portal for information 428
- postal secrecy [listovní tajemství] 190
- precautionary procedural measure 294
- preparatory proceedings 74
- President 184
- pre-trial proceedings 151, 303
 - period after and before 105
 - stages of 151
 - verification of 98
- proceedings prior to investigation 85
- proceeds of crime 216, 220, 314, 315, 316, 337, 338
- procurement fraud 136
- prohibition to travel abroad 294
- Public Procurement Act 369
- public procurement sector 369
- reconstruction 279, 283
- Regulation 2020/2223 351
- Regulation 2185/96 351, 421
- resolution on the initiation of a criminal investigation against the accused 75
- restraint warrant 296
- right
 - to legal representation 102
 - to access the case file 103, 106
 - to lodge a complaint 103
 - to use their native language 106
 - to an impartial and balanced approach by the authorities 102
 - to appoint a defence counsel 110
 - to be present at hearings 106
 - to comment on all allegations and evidence against them 105
 - to declare an amnesty 195
 - to evoke the case 149
 - to legal representation 106
 - to obtain copies 115
 - to refuse to testify 186, 188
 - to self-defence 102
 - to submit motions 106
 - to the last word 106
 - to inspect the files 115
 - to present exculpatory evidence 106
- rights of the accused 99
- Rule of Law Report 135
- seal of confession [zpovědní tajemství] 190
- search 191
 - of a dwelling 191
 - of non-residential premises 204
 - of the home or other premises 190
 - personal 204
- secondary legislation
 - decrees 67
 - governmental regulations 67
- seizure
 - of computer equipment 229
- shipments

- detention and tracking 203
- sources of law
 - constitutional laws 65, 67
 - EU law 43, 63
 - judicial decisions 68, 140
 - secondary legislation 67
 - statutes 70, 134, 203
- specialist report 268, 269
- Staff Regulations 353
- standpoint 68, 182, 412
- State Agricultural Intervention Fund 370
- subsidiarity of criminal repression 119
- subsidy fraud 140
- sufficient grounds 75
- supervising European Prosecutor 104
- supervising prosecutor 104
- Supreme Audit Office 393, 408, 427
- suspect 86, 97, 306
- suspension of investigation 160, 176, 178
- sword of reproof 77
- T-46/23, Kaili v Parquet européen
 - arrest of an MP 34
- telecommunications traffic 234, 238
- testimony 187, 261
 - false 263
 - of minors and vulnerable witnesses 261
 - of the accused 256, 259
 - witness 254
- transnationalism 73
- travel expense fraud 136
- urgent or unrepeatable act 88, 150
- ústavní zákony 65
- VAT investigations 215
- verification on site 205, 280, 283
- wiretapping and recording of
 - telecommunications traffic 203, 233, 236, 238, 251
- withdrawal
 - of an item 214

This **Czech EPPO/OLAF volume** deals with investigations related to EU fraud. Various laws, from customs to tax and corruption laws, are linked to the legislation of the European Union and the Czech Republic. Practitioners must be familiar with financial criminal law in order to handle fraud cases. This handbook first explains the legal basis for EPPO investigations in the Czech Republic. The second part provides an overview of OLAF's investigations in the Czech Republic, with a focus on external investigations. Prof. Dr Jiří Jelínek and Tereza Ottová have acted as the publication's national experts.

While written in English, the volume includes footnotes that reproduce the original Czech 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

ISBN 978-3-8325-5856-7

