

THE EPPO/OLAF

XV

Compendium of National Procedures

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

Pierre Hauck and Jan-Martin Schneider

Italy



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Volume XV – Italy

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with Annotations by National Experts,
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Volume XV – Italy

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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
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	XXVII: Sweden

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Preface and Acknowledgements

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

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

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

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

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

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

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Pierre Hauck & Jan-Martin Schneider

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Executive Summary: The volume on Italy provides a comprehensive analysis of the legal framework and operational mechanisms related to criminal investigations of EU fraud offences, with a specific focus on the role of the European Public Prosecutor’s Office (EPPO) and the European Anti-Fraud Office (OLAF). The chapter is structured into three main sections: Part A presents relevant legislation concerning EU fraud offences, both at the Union level and within Italian law. It sets the foundation for understanding the legal tools and regulations available for addressing EU-related fraud in Italy, ensuring a thorough baseline knowledge of the legislative environment in which such investigations are conducted. Part B delves into the specifics of criminal investigations into EU fraud offences, detailing how Union and Italian laws intersect and operate in practice. This part outlines the procedural and legal steps taken by EPPO Regional Offices in Italy during the initiation and conduct of investigations. A detailed explanation of the entities and individuals, such as EPPO prosecutors, Italian authorities, and investigative bodies, who participate in the process. The collaboration mechanisms between national and EU-level authorities are highlighted. An in-depth analysis of the legal provisions from both Union and Italian laws that govern the start and progression of investigations. This includes the procedural rights and obligations set forth in EU regulations, such as Council Regulation (EU) 2017/1939, which establishes the EPPO framework, and their alignment with Italian criminal procedure. The section provides insights into how investigations are carried out in Italy, illustrating with recent case examples that involve customs, tax, and subsidy fraud. The third section serves as a practical compendium for understanding OLAF’s investigative activities in Italy. It emphasizes on-the-spot checks conducted according to Regulation 2185/96, and how these are executed in coordination with Italian law and national authorities. An explanation of the applicable regulations, such as Sigma Orionis Jurisprudence, and how they integrate with national laws during external investigations. The text provides insights for conducting such investigations effectively, along with tips for compliance with national regulations.

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Table of Contents

Preface and Acknowledgements	9
Table of Contents	15
Abbreviations	23
Tables & Figures	29
Explanation of Symbols & Highlighting	31
Copyright Statements & Free Licences	31
A. General Collection of Material for Part A and Part B	33
I. Collection of Cases for OLAF and EPPO concerning PIF Investigations	33
1. EPPO Regulation Examples concerning the Material Scope and Investigation Measures from National Case-Law	33
2. OLAF Regulation	39
II. Institutions	43
1. The EPPO in Italy	43
2. Organisation of the criminal justice system in Italy	44
III. Sources of law	48
1. National laws	48
a) EPPO-Investigation related laws and administrative Documents in Italy ..	48
b) Most relevant national laws in the investigations in Italy	49
c) OLAF-Investigation related laws	49
2. EPPO Adoption Act (Decreto Legislativo 2 febbraio 2021, n. 9)	51
B. EPPO-Regulation	75
I. Specific Introduction to the Italian judicial system related to the European Public Prosecutor's Office (EPPO) and of the protection of the EU's financial interests by means of criminal law	77
1. The Italian Adaptation to the EPPO Regulation: An Overview	77
a) Organisation of the Judiciary	77
b) Criminal Procedure	79
2. Investigations on PIF offences in Italy: combining the complexity	82
II. Criminal investigations according to the EPPO Regulation based on national law (measures)	86
1. Article 26 Initiation of investigations	89
a) Initiation of Investigations by virtue of Art. 26 para 1 EPPO Regulation	94
b) How to assess and verify relevant information by virtue of Art. 24 para 6, Art. 40 para 3 IRP 2020.003	95
aa. Relevant sources of the indications for a criminal offense falling within the competence of the EPPO	95
bb. Determination of the competence and verification of Crime Reports	102
(1) The Union standards, Art. 24 para 6 et seq. EPPO Regulation	102
(2) Competence of the EPPO, Art. 26 para 4	104
(3) Jurisdiction of the EDPs in Italy	105

(4) Internal Agreement on Jurisdiction of the regional office of the EPPO in Italy as stipulated by the EPPO Adoption Act	105
cc. How to assess and verify the suspicion level according to Art. 26	
para 1	105
(1) The PIF offences in Italian criminal law and the role of the Highest Criminal Court and the General Prosecution Office at the Italian Supreme Court	106
(2) Methods of investigation, Collecting information and documenting the initiation of an investigation for an indictment (Art. 34 et seq. EPPO Regulation, Art. 40 para 3 IRP)	112
(a) Peculiarities differentiated by PIF offences (Typologies of EU frauds)	112
(b) Fraud.....	112
(aa) Revenue frauds	112
(bb) Expenditure frauds.....	114
(c) Corruption offences	115
(d) Money laundering with PIF crimes	115
(e) Embezzlement	116
(f) Criminal organisation (PIF “Mafia clause”)	116
(3) Special national databases for PIF offences / Digital investigations, Art. 40 para 3 IRP 2020.003	116
(4) Specific legislation & Judgments for sufficient factual indications for the PIF offences in Italian criminal (procedure) law – overview ...	116
(a) Fraud-related peculiarities.....	116
(b) Examples and precedents	116
(aa) In national case-law and reports by OLAF & EPPO.....	116
(bb) In the case law of ECtHR and ECJ.....	119
c) Actions if “Decision to open a case” (Regulation + Rules in IRP, 2020.003 EPPO)	119
d) Justiciability and appeals (Defence perspective)	123
2. Article 27 Right of evocation	131
a) Provisions with a precluding effect for the Right of evocation of the EPPO, para 2	134
aa. Statute of limitations (prescrizione).....	134
bb. Amnesty and Pardon	137
cc. Criminal complaint	140
dd. Prosecution before the trial court	141
ee. Opposing legal validity	141
ff. Abatement of action (dispense with prosecution)	143
b) Urgent measures of national authorities for securing an investigation and prosecution.....	143
c) Competent national authorities in paras. 3 to 7 of Art. 27	155
d) Provisions regarding the finalisation of the national investigation, para 7	155
3. Article 28 Conducting the investigation.....	156

a)	The handling EDP carrying out the investigative measures, para 1	157
b)	Instructions and assignment of investigative measures for “those national authorities”	158
aa.	Guardia di Finanza/Italian Financial Police	161
bb.	Carabinieri Commands – their role and relationship to the EPPO....	163
cc.	Judicial police (Polizia Giudiziaria) and special audit staff	164
dd.	Supplementary investigations by the “ICQRF” – Central Inspectorate for repression of fraud	164
ee.	Ensuring compliance with national law.....	165
(1)	Via the general investigation provisions	165
(2)	Via national administrative decrees/regulations under criminal procedural law	176
(a)	Italy: Regulations for the Implementation of the Code of Criminal Procedure	176
(b)	Specific Decrees, non-formal laws, execution of the CPC, Tax Acts	181
ff.	Urgent measures in accordance with national law necessary to ensure effective investigations.....	185
c)	Provisions in relation to the Gathering Evidence.....	187
d)	Summary.....	192
4.	Article 29 Lifting privileges or immunities.....	193
a)	National privilege and immunity provisions, para 1	193
aa.	Legal (professional) privilege.....	194
(1)	Provisions in Italian Criminal law.....	194
(2)	Provisions on Lifting a legal (professional) privilege.....	197
bb.	Spousal privilege	198
(1)	Provisions in Italian law	198
(2)	Provisions on lifting a spousal privilege	199
(3)	National legislation	199
cc.	Privilege against self-incrimination.....	199
(1)	Enshrinement in Italian law.....	199
(2)	National legislation	202
b)	Immunity provisions.....	202
c)	Immunities and Privileges under union law, para 2	204
III.	National Law applicable in EPPO Investigation with Special Focus on Investigation Measures	206
1.	Article 30 Investigation measures and other measures	206
a)	Member States shall ensure that the European Delegated Prosecutors are entitled to order or request.....	209
aa.	Adaption Law of the Member State (Decreto Legislativo, 2 February 2021)	209
bb.	Provision in the CPC	210
b)	Investigation measures (Misure investigative e altre misure).....	212
aa.	Para 1(a).....	212
(1)	Search measures	212

(a)	Search any premises or land.....	212
(b)	Search any means of transport	213
(c)	Search any private home	214
(d)	Search any clothes and any other personal property	214
(e)	Search any computer system	215
(2)	Conservatory measures	217
(a)	Necessary to preserve their integrity	217
(b)	Necessary to avoid the loss	218
bb.	Para 1(b): Obtainment of the production of any relevant object or document either in its original form or in some other specified form	220
cc.	Para 1(c).....	222
(1)	Obtainment of the production of stored computer data, encrypted or decrypted.....	222
(a)	General Provisions in the CPC.....	222
(b)	Special Provisions in the CPC Tax Code, Digital Evidence Act..	222
(2)	Obtainment of banking account data and traffic data	223
(3)	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).....	224
(a)	Transposition of this Directive into Italian law.....	224
(b)	National Provision in relation to Art. 15(1) s. 2 of this Directive.	224
dd.	Para 1(d) Freezing instrumentalities or proceeds of crime, including assets	225
ee.	Para 1(e) Interception of electronic communications to and from the suspect or accused person.....	234
c)	Para 1(f) Track & Trace an Object.....	243
d)	Para 2: Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation, Art. 29	244
e)	Para 3: Conditions/ Thresholds for investigation measures	248
aa.	Conditions and Limitations for investigation measures of Para 1(c)-(f)	248
bb.	Serious offences Limitation for offences of Para 1(e) and (f)	249
f)	Notifications according to the last sentence of para. 3.....	249
g)	Para 4: Any other measure(s) in the EDP's Member State	249
h)	Para 5: National Procedures and national modalities for taking investigative measures and Special Use of Expert Witnesses	251
aa.	Rules Governing the National Procedures.....	251
bb.	The Use of OLAF Investigators as Special Witnesses in an EPPO Proceeding	255
2.	Article 31 Cross-border investigations.....	258
a)	Overview of general national codes and provisions.....	259
b)	Para 2: Assignment of measures by a handling EDP to an assisting EDP in another, foreign MS	260
aa.	Availability of measures to the EDP in Italy	260

bb.	Justification and adoption of such measures governed by the law of the MS' of the handling EDP	260
c)	Para 3: Judicial authorisation for the measure required under the law of the Member State of the assisting European Delegated Prosecutor	262
d)	Para 8: Decision by the Chamber concerning the execution of an assigned measure needed, or a substitute measure by the assisting EDP.....	262
3.	Article 32 Enforcement of assigned measures	263
a)	Accordance-clause: Assigned measures according to Para 2 of Art. 31 ..	263
b)	National Formalities and procedures expressly indicated by the handling European Delegated Prosecutor.....	283
4.	Article 33 Pre-trial arrest and cross-border surrender.....	284
a)	General relation to national law: applicable Codes.....	284
b)	Para 1: Provisions for arrest and pre-trial detention.....	284
aa.	Arrest (l'arresto)	284
bb.	Pre-trial detention (la detenzione preventiva dell'indagato o dell'imputato)	297
c)	Para 2: Cross-border surrender.....	316
d)	Fraud-related peculiarities.....	318
5.	Defence laws relating to EPPO actions concerning PIF Crime offences.	319
a)	General Role of the Defence	319
aa.	Art. 335 CPC.....	319
bb.	Invitation of the EDP to present oneself acc. to Art. 375 CPC	319
b)	Specialised legal law firms.....	320
c)	Defence in the investigation phase.....	320
aa.	The Input from the Regulation 2017/1939	321
(1)	Access to national case file	321
(2)	Access to the mirrored EPPO case file	323
bb.	Defence while investigation is under-way, Art. 28–33 EPPO Regulation.....	323
(1)	In cases involving investigative measures of Art. 30 EPPO-Regulation.....	323
(2)	Defence in Case of Arrest and Pre-Trial Detention, Art. 33 EPPO Regulation.....	323
d)	Finalisation of the Investigation: Defence in Indictment Phase and the Trial Phase	324
C.	OLAF-Regulation (EU, EURATOM) No 883/2013	325
I.	Investigation Powers Related to OLAF in Italy	325
1.	General Remarks and Historical Summary	325
a)	OLAF's Role and Task.....	325
aa.	OLAF in Italy.....	325
bb.	Transmission of Information to OLAF	326
b)	Accommodation of OLAF within the EU's Anti-Fraud Architecture	326
c)	Current Challenges for OLAF and Amendments (Regulation 2020/2023)	327
d)	Contents.....	327

2.	Article 1 Objectives and tasks and Article 2 Definitions	328
3.	Article 3 External investigations	329
a)	On the spot-checks and inspections – Renouncing the applicable national law – Para 2, 4.....	334
b)	Resistance by the economic operator vs. law enforcement and effective investigations, para 6 or the new model and the relevance of resistance or conformity of the Economic Operator	334
c)	The basic principle of conformity to Regulations 2185/96 and 883/2013335	
aa.	Submission: Compliance with Union law	335
bb.	Resistance: Assistance in conformity with national procedural rules applicable.....	335
d)	Competent authorities.....	335
e)	National law and “on-the-spot-checks and inspections” of OLAF	340
aa.	Administrative procedure in general	341
bb.	Special administrative powers and provisions in certain areas of revenue and expenditure.....	343
(1)	Administrative provisions	344
(a)	Administrative provisions in the area of customs duties and value added tax (VAT) = revenue	344
(aa)	Principle of investigation (General Tax Code).....	344
(bb)	External audit (General Tax Code)	344
(cc)	Tax and customs investigation (Customs Code/General Tax Code)	344
(dd)	Fiscal supervision	351
(b)	Administrative provisions in the area of structural funds and internal policies (interne Politiken) = expenditure	352
(aa)	Structural funds.....	352
(bb)	Internal policies	355
(c)	Administrative provisions in the area of the common organization of the markets= expenditure.....	356
(d)	Administrative provisions in the area of direct expenditure	356
(2)	Investigative powers.....	362
(a)	Investigative powers in the area of customs duties and VAT (General Tax Code)	362
(aa)	VAT area.....	362
(bb)	Custom Duties area.....	375
(b)	Investigative powers in the area of structural funds and internal policies	379
(c)	Investigative powers in the area of common market organisations	384
(d)	Investigative powers in the area of direct expenditure.....	388
(3)	Protection of information	395
(a)	Banking Secrecy.....	395
(b)	Tax secrecy (General Tax Code).....	396
(c)	State and Administrative secrecy (Administrative laws)	396

(d) Data secrecy (Data protection laws, Customs Code, General Tax Code).....	397
(e) Official secrecy (Customs Code, General Tax Code).....	404
(4) Investigation reports (Customs Code, General Tax Code)	406
(5) Preservation of Evidence (Customs Code, Tax Decrees)	407
f) A closer look at single measures	407
aa. Interviewing/Questioning of “persons concerned” (in relation to suspects/defendants)	407
bb. The taking of statements from Economic Operators.....	408
cc. Interviewing/Questioning of witnesses.....	409
dd. Searches and Inspections by national authorities and OLAF officials to discover irregularities in Italy, Art. 19 et seq. Presidential decree No 43 of 23 January 1973 (Customs area), Art. 33 Presidential decree No 600 29 September 1973 (VAT and tax area).....	409
(1) General remarks	410
(2) Formal requirements	410
(3) Substantive requirements	415
ee. Seizure of other evidence during on-the-spot-checks.....	417
ff. The seizure of digital forensic evidence including bank account information	418
gg. Acquisition of digital evidence.....	420
hh. Digital forensic operations within inspections or on-the-spot checks	421
g) National procedural rules for “checks and inspections” by the assisting national authority	422
h) Cooperation and mutual assistance agreements	423
4. Article 4 Internal investigations	424
a) References to national law, para 8.....	424
b) Competent authorities.....	426
5. Article 5 Opening of investigations	427
a) Competent authorities.....	427
b) National rules	428
6. Article 7 Investigations procedure	442
a) References to national law	443
b) References to national authorities	445
7. Article 8 Duty to inform the Office.....	446
II. References to National law in the OLAF Regulation (Art. 9–17 OLAF Regulation)	447
1. Article 9 Procedural guarantees	447
a) Art. 9 para 3 – remit of a national judicial authority.....	448
b) Art. 9 para 4 – national judicial authorities	448
2. Article 10 Confidentiality and data protection.....	449
3. Article 11 Investigation report and action to be taken following investigations	450
a) References to national law	451

b) National authority, para 3	453
4. Article 12 Exchange of information	455
a) Art. 12 para 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law)	456
b) Art. 12 para 2 OLAF Regulation (judicial authorities of the Member State concerned)	457
c) Art. 12 para 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned)	458
d) Art. 12 para 4 OLAF Regulation (Providing evidence in court proceedings before national courts and tribunals in conformity with national law)	458
5. Article 12a Anti-fraud coordination services	463
[Article 12b–12d omitted]	465
6. Article 12e The Office’s support to the EPPO	466
[Article 12f–g omitted]	466
7. Article 13 Cooperation of the Office with Eurojust and Europol	467
[Article 14–16 omitted]	468
8. Article 17 Director-General	469
a) National law applicable to judicial proceedings	470
b) Internal advisory and control procedure: Legality check involving national law	472
[Article 18–21 omitted]	474
Annex	475
Bibliography	483
Further Reading and Material	500
Index	505

Abbreviations

ACAs	Administrative Cooperation Agreements
ACT	Italian Agency for Territorial Cohesion / Agenzia per la Coesione Territoriale
ADM	Italian Customs and Monopoly Agency / Agenzia delle Dogane e dei Monopoli
Ae	Revenue Agency / Agenzia delle Entrate
AFCOS	Anti-fraud coordination service
AFSJ	Area of Freedom, Security and Justice
AgEA	Agency for Agricultural Grants / Agenzia per le Erogazioni in Agricoltura
AMIF	Asylum, Migration and Integration Fund
AML	Anti Money Laundering
ANAC	National Anti-corruption Authority / Autorità Nazionale Anti-corruzione
ARO	The National Asset Recovery Office / Ufficio nazionale per il recupero dei beni
BMVI	Instrument for Financial Assistance in
CC	Criminal Code
CdC	Italian Court of Auditors / Corte dei Conti
CF	Cohesion Fund
c.p.	Criminal Code / Codice Penale
c.p.p.	Codice di Procedura Penale

COCOLAF	Advisory Committee for the Coordination of Fraud Prevention
COLAF	Committee for Combating Fraud against the European Union / Comitato per la lotta contro le frodi nei confronti dell'Unione Europea
CPC	Criminal Procedure Code
D.P.R.	Presidential Decree / Decreto del Presidente della Repubblica
DNAA	National Anti-Mafia and Anti-Terrorism Directorate / Direzione nazionale anti-mafia e antiterrorismo
EAFRD	European Agricultural Fund for Rural Development
EAGF	European Agricultural Guarantee Fund
EAW	European Arrest Warrant
EC	European Commission
ECA	European Court of Auditors
ECHA	European Chemicals Agency
ECHR	European Convention of Human Rights
ECJ	European Court of Justice (now CJEU)
ECJN	European Judicial Network against Cybercrime
ECON	European Parliament's Committee on Economic and Monetary Affairs
ECP	European Chief Prosecutor
ECtHR	European Court of Human Rights

EDF	European Development Fund
EDMS	Electronic Document Management System
EDO	European Data Officer
eDP	ePrivacy Directive
EDP	European Delegated Prosecutor
EEAS	European External Action Service
EEC	European Economic Community
EIO	European Investigation Order
EJN	European Judicial Network
EMFAF	European Maritime, Fisheries and Aquaculture Fund
EP	European Prosecutor
EPP	European Public Prosecutor
EPPO	European Public Prosecutor's Office
ERDF	European Regional Development Fund
ESF+	European Social Fund Plus
ESIF	European Structural and Investment Funds
ESMF	European Shared Management Funds
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
EUROPOL	European Police Office
G.U.	Official Gazette / Gazzetta Ufficiale
GC (aka CFI ex-2009)	General Court of the EU / formerly Court of First Instance
IBOAs	Institutions, Bodies, Offices, and Agencies
IMS	Irregularity Management System
IRP	Internal Rules of Procedure
ISF	Internal Security Fund
JITs	Joint Investigation Teams
MEP	Member of European Parliament
mipaaf	Ministry of Agricultural, Food and Forestry Policies / Ministero delle politiche agricole alimentari e forestali
OAFCN (-Member)	OLAF Anti-Fraud Communicators' Network
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office
PC-OC	Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters
PIF	Protection of the EU's Financial Interests
RAI	Regional Anticorruption Initiative
SNE	Seconded National Expert(s)

TAR	Regional Administrative Court / Tribunali Amministrativi Regionali
TFEU	Treaty on the Functioning of the European Union
TUD	Consolidated Customs Law / Testo Unico Doganale
UCLAF	Anti-Fraud Coordination Unit / unité de coordination de la lutte antifraude
VAT	Value Added Tax

Tables & Figures

Figure 1: Visualisation of the judicial and administrative order in Italy	47
Figure 2: National (indirect way of) Obtaining information for the EPPO competence and the exercise of jurisdiction	95
Figure 3: Supranational (direct way of) Obtaining information for the EPPO competence and the exercise of jurisdiction.....	96
Figure 4: Right of evocation/time limits/refrain taking decisions that have a precluding effect – Overview for Italy.....	133
Figure 5: Assignment of “those national authorities” in Italy, Art. 28 EPPO Regulation	159
Figure 6: Organisation of the Economy and Finance Protection Command.....	160
Figure 7: Italian regional, territorial offices to discover fraud and irregularities in the area of food safety.....	165
Figure 8: Italian Customs Authority in an Organigram.....	337
Sources & national sections 1: PIF offences in Italy.....	107
Sources & national sections 2: Art. 31 EPPO Regulation: Overview for Italy	260
Sources & national sections 3: Art. 32 – Overview.....	264
Sources & national sections 4: Art. 3 OLAF Regulation	410
Sources & national sections 5: Art. 7 OLAF Regulation	443
Sources & national sections 6: Overview for Italy – Art. 11 OLAF Regulation	451
Table 1: Important Judgments for EDPs, Lawyers and Citizens in the PIF Acquis Area in Italy (mainly VAT Fraud Jurisprudence)	33
Table 2: OLAF-related Judgments by the CJEU and Examples from the OLAF-related Jurisprudence of the National Courts.....	39

Table 3: The EPPO regional offices in Italy..... 43

Table 4: National authorities involved in PIF investigations 44

Table 5: Italy Overview Box: Art. 26 EPPO Regulation (PIF offences etc.)..... 91

Table 6: New PIF Acquis Offences Decree 156/2022..... 107

Table 7: Structural funds and national administrative authorities – Cohesion policy
acc. to the CFR Regulation in Italy (2021–2027)..... 354

Table 8: EPPO Italy Judicial Actions – Summary Table (November 2023 to July 2025)
..... 475

Explanation of Symbols & Highlighting

Text passages highlighted in grey show Union law.

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





















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

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

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

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	=	Examples		=	judicial authorisation required (e.g. Art. 30)
	=	Nota bene/General note		=	urgent measures (e.g. Art. 27, 28)
	=	Case Law/Access to files		=	Plaintiff (Pi)
	=	Tax police/tax-related matters		=	(Delta) Defendant
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A. General Collection of Material for Part A and Part B

I. Collection of Cases for OLAF and EPPO concerning PIF Investigations

The collection of cases and jurisprudence is essential for any EDP, SNEs of OLAF, national defence attorneys or economic operators.¹ 1

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

Table 1: Important Judgments for EDPs, Lawyers and Citizens in the PIF Acquis Area in Italy (mainly VAT Fraud Jurisprudence)



Articles referred to	Judgment, ECLI etc.	Content
EPPO Regulation		
Art. 22–26, PIF Acquis Area Cases		For comprehensive information on ongoing cases handled by the EPPO, please consult the EPPO homepage. Additional resources, such as the websites of the <i>Carabinieri</i> , Guardia di Finanza, and the regional EPPO offices, are accessible through the Italian Ministry of Justice’s official website. For completed cases, refer to the databases maintained by the Italian Courts’ Administration and review the EPPO Annual Report. Relevant national cases that interpret the laws referenced in the PIF Directive are also explored, offering deeper insights into the application and impact of these legal provisions within Italy’s judicial framework.
Art. 22–26	Court of Cassation, Section II, 3 December 2020 (dep. 2 February 2021), n. 4039 Camino President	Contractual fraud. It cites stare decisis.
Art. 24–26 EPPO Regulation	Criminal Cassation, Section III, 20 January 2017, n. 189 24.	The case deals with VAT fraud, criminal liability of the head of a company. It cites Art. 2392 code civ., which ensures that the Head must support and protect the company (“ <i>Verhaltensnorm</i> ”). It dealt with a carousel fraud scheme and the consequences

¹ See e.g. https://www.steppo-eulaw.com/italian_supreme_court/, which offers some case.law and is a great idea to foster access to decisions of Italian courts – but it remains a self-made project and it does not change the situation that obtaining decisions is not free in Italy. See <https://www.cortedicassazione.it/it/homepage.page>. And in an empirical study Lasagni et al. analysed the enforcement of the EPPO in Italy, see <https://site.unibo.it/epitaly/en> (EPPITALY project).

	Court of Cassation (III criminal section), with sentence no. 42606/2022.	Art. 2, Legislative Decree 74/2000, Requirement of intent (<i>dolus eventualis</i>), False invoices, criminal liability of the head of a company. Tax return, non-existent transactions.
Art. 22–26 EPPO Regulation, Art. 27	Criminal Cassation, Section V, 10 March 2016, n. 19460 – Pres. Nappi, Rel. Morelli Case-Law cited: Cass. Pen., Section V, 24 March 2010 n. 16579 = instability of the company, wilful bankruptcy.	Court of Milan, Tax frauds, tire trading activities, Sales tax fraud, VAT, paper companies, a criminal association for the commission of “carousel fraud” (Art. 2 Legislative Decree 74/2000; Art. 416 of the criminal code); bankruptcy of the same (Art. 223, paragraph 2, n. 2 lf), Court of Appeal, statutes of limitations not observed by first instance court.
Art. 22–26 EPPO Regulation, Art. 1-5 PIF Directive	Court of Cassation, Cass., Sez. VI, 22 ottobre 2020, n. 30637 Codice RV: 279884 Data udienza 22 ottobre 2020 ² . Relating to Court of Cassation, Cass., Section 6, n. 39039 of 04/15/2013 [“... in relation to money public whose possession, due to the internal rules of the public body which provide for the concurrence of several bodies for the purpose of adopting the operative act, belongs jointly to several public officials, even if, of these, those who issue the final act of the proceeding do not contribute	Art. 61 nr. 9 Codice penale, Art. 81 para 2, 314, 640 CPC, Fraud, Aggravated fraud, Embezzlement, 139,869.56 euros by way of fees for works and services never performed, Court of Catania = Court of Appeal: “The conduct of a public official who appropriates public money also integrates the crime of embezzlement and not that of aggravated fraud in the event that, due to the internal rules of the entity which provide for the intervention of several bodies for the purposes of adoption of the deed, the person who formally issues the final deed of the proceeding does not participate in the crime due to having been misled by those who deal with the preliminary investigation phase”

Italian jurisprudence is still partly very opaque – even years after digitization processes – it is evident that there are no complete free access options, as in other countries, when it comes to jurisprudence. Italicure e.g. is chargeable (1000 minutes volume etc.). This is a contradiction to a true pan-European law enforcement, which the EPPO wants to achieve. The Italian state, like the Czech state must for legislation access, finance the digitization of jurisprudence for free offers for the citizen and the state as well as scientific bodies.

² See <https://www.penaledp.it/app/uploads/2021/05/Cass.-Sez.-VI-22-ottobre-2020-n.-30637-.pdf>. Accessed 31 October 2025.

	to the crime for having been misled by those who took care of the preliminary investigation phase...”].	
Art. 23-26 EPPO Regulation	Criminal Cassation, Section III, 12 May 2016, n. 39789 – Pres. Ramacci, Rel. Riccardi.	VAT, judge decides on VAT deduced, or omitted.
Art. 27 EPPO Regulation	ECJ, Case C-524/15 Criminal proceedings against Luca Menci, ECLI:EU:C:2018:197.	Ne bis in idem, Value added tax (VAT), administrative penalty, Charter of Fundamental Rights, Art. 50/52.
Art. 27 EPPO Regulation	Court of Cassation, section V, no. 5716 of 07.08.2019, 13.02.2020, Righetto, Rev. 278322.	This decision refers to the so-called double compliant acquittal, which might in an EPPO case possibly hinder an evocation.
Art. 30 EPPO Regulation	Criminal Cassation, Section III, 15 September 2016, no. 37256 Pres. Squassoni, Rel. Grillo.	The offence suspected was fraudulent declaration through the use of invoices or other documents for non-existent transactions pursuant to Art. 2 Legislative Decree 10 March 2000, n. 74. Investigation measure: Seizure and Freezing (important for actions concerning Art. 30 para 1 (c) and (d) EPPO Regulation): Preliminary Judge rejected the request for preventive seizure for equivalent against the director of a company.
Art. 36, 37, Art. 41 para 2 EPPO Regulation	Criminal Cassation, Cass., III, 22 February 2022, no. 6637 (seizure, jurisdictional remedy).	In matters of appeals against precautionary real measures, an appeal to the Court of Cassation against the decision of the Tribunal of Review must be filed with the registry of the tribunal that issued that decision. The risk falls on the appellant that, if the appeal is lodged with a different office, it may be declared inadmissible as time-barred, since the registry is in no way under an obligation to transmit the acts to the competent judge pursuant to Article

		582(2) of the Code of Criminal Procedure. For the purposes of timeliness, the relevant date is that on which the act is received by the office competent to accept it. (In the case at hand, the Court declared inadmissible, due to tardiness, the appeal to the Court of Cassation lodged, following avocation, by the European Delegated Prosecutor against the order rejecting the appeal concerning precautionary seizure).
Art. 30 para 1, 41, 42 EPPO Regulation	Criminal Cassation, Cass., VI, 1 February 2023, no. 8963 (seizure).	In matters concerning the unlawful receipt of payments to EU's detriment, the EDP is competent to request or to order any of the investigative measures provided for in Article 30 para 1 EPPO, including the preventive seizure, for the purpose of confiscation (whether direct or by equivalent), of the proceeds of the offence under Article 322-ter of the Criminal Code. This applies even where the amount is less than EUR 100,000 and the aggravating circumstance under Article 316-ter(1), final sentence, of the Criminal Code is therefore not applicable, since the aforementioned EU provision must be interpreted as not excluding the use of such investigative measures in relation to offences punishable by a lesser penalty than that provided for the aggravated case.
Art 22–26, 30 EPPO	Supreme Court of Cassation, Third Criminal Division, Judgment No. 34197 of 20 October 2025, ECLI:IT:CASS:2025: 34197PEN.	Partial release of assets seized from R. P. & C. s.r.l., accused of customs fraud involving electric bicycles imported from China. The alleged offences include violations of Articles 292 and 295(2)(c, d-bis) of Presidential Decree No. 43/1973 (TULD), Articles 476,

		479, 640, and 81 cpv. of the Italian Penal Code, and corporate liability under Articles 24 and 25-sexiesdecies of Legislative Decree No. 231/2001. R. P. & C. s.r.l. filed a cassation appeal against the Naples Tribunal's refusal to revoke part of the preventive seizure, arguing that the profit attributable to them €757,985.92 was miscalculated, and seeks annulment of the decision under Article 606(1)(e) of the Italian Code of Criminal Procedure.
Art. 30, 41, 42 EPPO Regulation	Supreme Court of Cassation, Criminal Section II No. 34177 of 2025 24 September 2025 ECLI:IT:CASS:2025:34177.	Preventive seizure of jewellery and diamonds found in the home of F, whose husband is under investigation for EU subsidy fraud. The alleged offences (Article 640 CC) and seizure for equivalent under Articles 321(2) and 322-ter CPP. F, as a third party, filed an appeal against the Naples Tribunal's order, seeking restitution of the seized assets by claiming exclusive ownership, but the Court of Cassation dismissed her claim as inadmissible.
Artt 22–26, 30 EPPO	Supreme Court of Cassation, Criminal Section VI No. 33382 of 2025 of 8 October decided 5 February ECLI:IT:CASS: 2025:33382.	G. D. Donne, head of P. S.r.l., faced preventive seizure of €85,745.22 for alleged misuse of EU PNRR funds. He was accused of misappropriation under Article 316-bis of the Italian Penal Code. His appeal against the Pescara Tribunal's order was rejected by the Court of Cassation.
Art. 31 EPPO	See → the Austrian volume and the preliminary ruling of OLG Wien (Supreme Court of Wien) to the ECJ, 28. April 2022.	
ECtHR		
Art. 26 EPPO Regulation	<i>Grande Stevens and others v Italy</i> , App Nos 18640/10, 18647/10, 18663/10, 18668/	<i>Ne bis in idem</i> (punitive vs. administrative penalties: important for OLAF/EPPO).

	10 and 18698/104/ 3/2014 (ECHR 4 March 2014).	
Art. 25 para 6, Art. 33 para 2 EPPO Regulation, Framework Decision 2009/ 948/ JHA	Cass., VI, 17 December 2021, no. 46641 (EAW). ³	In matters concerning the EAW, the optional ground for refusal based on the offence having been committed wholly or partly within the territory of the State, pursuant to Article 18-bis, letter a), Law of 22 April 2005, no. 69, cannot be raised when the warrant has been issued in proceedings concerning offences falling within the competence of the EPPO. In such cases, issues of inter-jurisdictional coordination relating to the pendency of criminal proceedings for the same facts before judicial authorities of different Member States of the EU have already been resolved, albeit provisionally, by virtue of the assumption of coordination of the investigations by the EPPO.
Art. 27 EPPO Regulation	ECtHR, Judgment 06.29. 2017, <i>Lorefice v. Italy</i> .	<i>Ne bis in idem</i> .

Source: The authors.

- Further decisions are presented in the Annex. It contains an overview of the main actions of all Regional EPPO Centers from January 2024 to July 2025. This enables any EDP in connection with the national guidelines, the applicable national law presented below and the judgments of Italian courts in PIF Acquis matters to better “fight” the frauds. To search jurisprudence we used words such as Customs/origin/anti-dumping: “OLAF/EPPO origine”, “dazi antidumping”, “rettifica origine”, “report“. These retrieve the Cassazione line on OLAF reports in origin dispute “valore in dogana”, “rettifica valore doganale”, “post-clearance” etc.

³ See <https://canestrinilex.com/en/readings/eppo-investigation-bans-optional-refusal-ground-of-an-eaw>. Accessed 30 June 2025.

2. OLAF Regulation

Table 2: OLAF-related Judgments by the CJEU and Examples from the OLAF-related Jurisprudence of the National Courts

3



Relates to following Art. of the Regulation	Judgment, ECLI, etc.	Content
OLAF Regulation		
Art. 3 External Inspections, OLAF's Competence, Example Case	Court of Cassation, Cassation ruling No. 16469/2020.	Import of steel screws, Indonesian origin?, Chinese origin? Controversial import before OLAF search, legal issue. <i>Ex ante/Ex post</i> control. Customs notice is authoritative. Date is crucial. Authority determination is important. "Charged" import does not refer to search.
Art. 3, 11 OLAF Regulation	Court of Cassation, sentence 9 June 2022, No. 2422.	The customs authority cannot determine or deny the origin of imported products if these allegations are not based on allegations described in a file from an examination by OLAF. Keywords: OLAF Report, Origin of goods, to the Tax Commission Regional of Milan. Anti-dumping case. Duties on imports of steel pipes. Lessons Learned: Always check, whether you are administrative staff in the Italian Tax Administration or working for the Italian Customs Agency, whether OLAF's Report is sufficient to provide evidence in national courts.
Art. 3 OLAF Regulation	Civil Cassation, Section V, 08 April 2016, No. 6864 – Pres. Piccininni, Rel. Bielli.	Italian Tax Administration: The VAT Departments carousel fraud are obliged to prove fraud. If there is a suspicion of fictitious interference by the biller in the transaction, the good faith of the transferee against the issue of a payment file against him. Then the tax authorities bear the burden of proof that the taxpayer could at least

		have known about the irregularity of the process.
Art. 3, 5–7 OLAF Regulation	Court of Cassation, Judgment 03 May 2019, No. 11631.	OLAF mission carried out in Tunisia, Potential irregularity, fraud, Anti-dumping duties on imports of energy-efficient CFL-i integral compact fluorescent lamps, Good faith of company, Inadmissibility of Appeal of Tax Department, Customs of Livorno, Chinese origin declared, potentially wrong, Tunisian suspected, Customs Document Form A false?, recovery of the higher customs duties due, Art. 94 of regulation no. 2454/93. Regional Tax Commission of Tuscany.
Art. 11 OLAF Regulation	Court (trib.) of Comm. prov. Venice, June 7, 2021, Nos. 456 and 457. Cass. No. 4997/2009; Cass. No. 5892/ 2013	Conducting external investigations to gather evidence for the transport of imported goods is necessary, see → Art. 11 OLAF Regulation. Ruling on existence of the conditions of applicability of the preferential regime.
Art. 5 OLAF Regulation	Cass. No. 13770/2016	Customs duties fraud, Ruling on existence of the conditions of applicability of the preferential regime.
	Cass. No. 16962/2016	Ruling on existence of the conditions of applicability of the preferential regime.
	Cass. No. 11441/2018	Ruling on existence of the conditions of applicability of the preferential regime.
Art. 8–10 OLAF Regulation	Court of Cassation No. 8337 of 29 April 2020.	Important for defence lawyers and OLAF Legal Interns: OLAF must provide information; reports and its information alone cannot constitute a sufficient element in itself to definitively ascertain the obligation of higher duties. The information must refer to the investigation in question.
Art. 9 OLAF Regulation	Court of Cassation, Judgment 03 May 2019, No. 11631.	Potential irregularity, fraud, Anti-dumping duties on imports of energy-efficient CFL-I integral compact fluorescent lamps; Judge doubts imputability to the exporter of the falsity of the indication contained in the

		certificate, Art. 220 of the Community Customs Code, see above → Art. 3.
Art. 9 Access to OLAF File	ECJ, Case C-371/21 P, <i>SGI Studio Galli Ingegneria Srl v European Commission</i> , 2022/C 359/09, Judgment of the Court (Tenth Chamber) of 14 July 2022 and demonstration (2007–2013)	Grant agreement, Marsol project, Costs eligible for financing, Investigation report by the European Anti-Fraud Office (OLAF) which establishes the irregularity of certain expenditure incurred, Reimbursement of sums paid, Right of access to OLAF’s file , Right to be heard, Burden of proof, Distortion of facts, Probative value – Principle of proportionality, Unjust enrichment]. [Appeal - Arbitration clause, Seventh framework program for research, development technology.
Art. 11	Court of Cassation, Cassation ruling No. 16469/2020.	Import of steel screws, Indonesian origin?, Customs Agency contests Importer. On-the-spot checks, Chinese origin?, According to the inspectors, the Indonesian exporter did not have a real production capacity to manufacture these goods; Appeal by Customs Agency, Judges confirm: It is up to the taxpayer/importer to provide proof to the contrary. Controversial import before OLAF search, legal issue. Ex ante/Ex post control. Customs notice is authoritative. Date is crucial. Authority determination is important. “Charged” import does not refer to search. OLAF Report and Officials in Court.
Art. 8–10 OLAF Regulation	Court of Cassation, Section V, July 31, 2020 No. 16469.	Evidence of the OLAF investigation and report.
Art. 8–10 OLAF Regulation	Comm. Tribunal provincial La Spezia, 24 May 2022, No. 149 und 150.	Request for more evidence coming from the OLAF investigation and report.
Art. 3, 10, 11 OLAF Regulation	Cass., Section V, 4 July 2019, No. 17945	Certificates of non-preferential origin (issued by the customs of the sending country) have legal probative value in judicial proceedings.

- 4 All in all, the probative value of OLAF final reports was again confirmed recently.⁴ In a Judgment the Italian Customs Agency imposed duties and sanctions on an Italian company (Ca.S.T.Im. 2000 S.r.l.) after an OLAF investigation suggested that stainless steel tubes declared as originating from India were in fact of Chinese origin, subject to a 71% anti-dumping duty. The company challenged the decision, arguing that the OLAF report lacked sufficient proof. Both lower tax courts agreed, and the Customs Agency appealed to the *Corte di Cassazione*. The Supreme Court ruled that **OLAF reports have evidential weight but are not conclusive proof if they only contain general statements or statistical data without specific, verifiable findings**. They can only shift the burden of proof to the taxpayer when they are concrete and detailed enough to substantiate the customs authority's claim. In this case, the OLAF report was too generic and could not alone establish that the goods were of Chinese rather than Indian origin.⁵ In a further case the Supreme Court held that OLAF reports and Form-A certificates have evidential value but are not conclusive; actual origin must be proven with concrete, **case-specific evidence**. Since the OLAF report did not establish Taiwanese origin and other indicia supported Philippine processing, the lower courts' rulings stood.⁶ Lastly the Venice Tax Court annulled a customs reassessment where anti-dumping duties were imposed on steel pipes declared as Thai origin but alleged by OLAF to be Chinese, holding that the OLAF report was too generic and lacked case-specific proof. OLAF reports carry weight but cannot, on their own, override valid certificates of origin unless they contain concrete, verifiable evidence.⁷ What we saw in general is that Italian customs disputes often involve alleged **false origin** to evade anti-dumping duties (e.g., Chinese goods declared as ASEAN origin). OLAF triggers/coordinates third-country checks; ADM issues post-clearance recovery and penalties and taxpayers appeal to tax courts. Courts accept "OLAF reports" but they expect **transaction-level linkage** (imports, suppliers, production steps) and will strike down rectifications built only on general OLAF narratives.

⁴ Cassazione, 30 Jan 2020 n. 2139.

⁵ Ordinanza Corte Di Cassazione N. 4099/2024 Del 14/02/2024 – Indagini O.L.A.F.: Valore Probatorio – St. 17 2024

⁶ Ordinanza del 23/06/2023 n. 18124 - Corte di Cassazione - Sezione/Collegio 5.

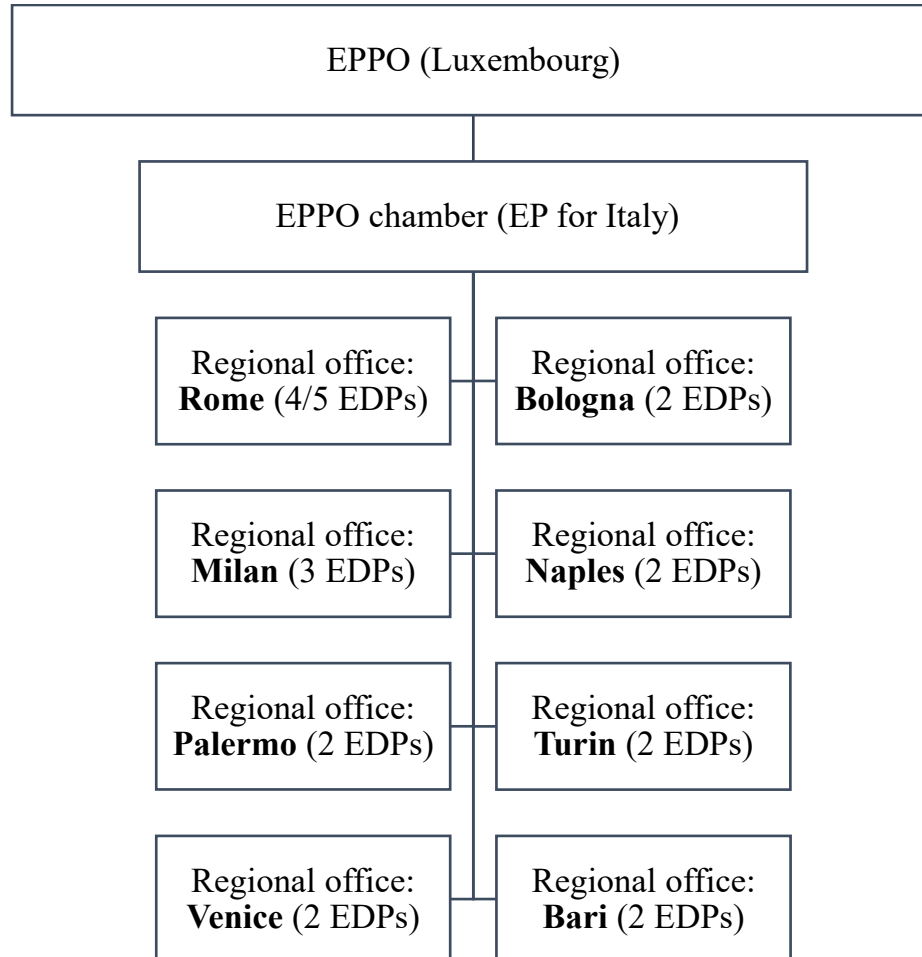
⁷ <https://www.arcomsrl.it/indagine-olaf-inutilizzabile-come-prova/>, Accessed 30 June 2025; Corte di Giustizia tributaria di primo grado di Venezia, sentenza 6 dicembre 2024, n. 755; see as well Cassazione, 29 Apr 2020 n. 8337: assessments relying on OLAF findings are unlawful if the investigation does not directly concern the imports at issue.

II. Institutions

1. The EPPO in Italy

Table 3: The EPPO regional offices in Italy

5



Source: EPPO Website. For Updates see online here: <https://www.eppo.europa.eu/en/about/members/italy>.⁸

⁸ EPPO Regional Centers Contact Data: At the time of writing the position of the EP for Italy was released and Andrea Venegoni was sworn in. The EDPs were: Rome: via Triboniano n. 3, 00193 Roma; Phone: (+39) 0677642433; European Delegated Prosecutors: Mariarosa Guglielmi, Alberto Pioletti, Alessandro Di Taranto, Antonio Pastore; Milan: Via Fabio Filzi n. 22, 20124 Milano; Indirizzo di invio posta/delivery address: Procura Europea c/o Ufficio Protocollo, Via Pirelli n. 12 – 20124 Milano; Phone: (+39) 0254338500; European Delegated Prosecutors: Giordano Ernesto Baggio, Gaetano Ruta, Sergio Spadaro; Bologna: Via Ilio Barontini n. 16-18-20, 40138 Bologna; Phone: (+39) 0512753000; European Delegated Prosecutors: Elisa Francesca Moretti, Pasquale Profitti; Naples: Nuovo Palazzo di Giustizia, Piazza Porzio Lotto 1°, Piano IV, 80043 Napoli; Phone: (+39) 0812232577; European Delegated Prosecutors: Maria Teresa Orlando, Valeria Sico; Palermo: Nuovo Palazzo di Giustizia, Via dell'Altare, Corpo M – Piano 1°, 90138 Palermo; Phone: (+39) 0917423830; European Delegated Prosecutors: Calogero Ferrara, Amelia Luise; Turin: Via Fratelli Ruffini n. 9, 10121 Torino; Phone: (+39) 0114329689; European Delegated Prosecutors: Stefano Castellani, Adriano Scudieri; Venice: Fondamenta S. Lucia 23, Cannaregio, 30121 Venezia, c/o Palazzo della Regione; Phone: (+39) 0418727901; European Delegated Prosecutors: Donata Patricia Costa, Emma Rizzato; Bari: Viale Dioguardi 3, 70124 Bari; Phone: (+39) 0809275943; European Delegated Prosecutors: Michele Incani, Teresa Iodice.

2. Organisation of the criminal justice system in Italy

6 Table 4: National authorities involved in PIF investigations

Criminal offences investigating authorities	Law Enforcement and Agencies¹³	Relevant Ministries
<ul style="list-style-type: none"> - Public Prosecutor (e.g. National Anti-Mafia and Anti-Terrorism Directorate) (<i>Procuratore della Repubblica</i>): Office of the Public Prosecutor attached to the Court of first instance [district-only] (Regional), e.g. of Bologna (<i>Procura della Repubblica presso il Tribunale di Bologna</i>) - General Prosecutor's Office at the Court of Appeal (Regional), e.g. of Bologna - Judicial Police - Tax Police (<i>Guarda di Finanza</i>), special agency conducting internal investigations into tax offences + in economic and financial areas⁹ - Italian Financial Intelligence Unit - The <i>Commissione Nazionale per le Società e</i> 	<ul style="list-style-type: none"> - Tax Police (<i>Guarda di Finanza</i>) (hybrid function, i.e. administrative policing and criminal investigating functions)¹⁴ - <i>Carabinieri</i>: <ul style="list-style-type: none"> · Investigative units, · Agri-food Protection Command Investigators of the Ministry of Agriculture (<i>Comando Carabinieri per la Tutela Agroalimentare</i>) · <i>Carabinieri Command for Forest, Environmental and Agri-food Protection</i> (<i>Comando carabinieri per la tutela forestale, ambientale e agroalimentare</i>) · Agency for Agricultural Disbursements (<i>Agenzia per le Erogazioni in Agricoltura</i>) - Department of the Central Inspectorate for quality protection and fraud 	<p>Ministry of Agriculture, Food and Forestry (<i>MIPAAF - Ministero delle politiche agricole alimentari e forestali</i>):</p> <ul style="list-style-type: none"> - Department of competitive policies, agri-food quality, fishing and horse racing: Directorate-General for Maritime Fisheries and Aquaculture (PEMAC¹⁷) - Provincial Inspectorate of Agriculture (IPA¹⁸) - Department of European and International Policies and Rural Development (DIPEISR¹⁹) - Department of the Central Inspectorate for quality protection and fraud repression of agri-food products (IC-QRF²⁰): Directorate-General for the prevention and fight against agri-food fraud (PREF²¹)

⁹ Nicolichia 2017, p. 10

¹³ Presidenza del Consiglio dei Ministri, Dipartimento Politiche Europee 2019.

¹⁴ Nicolichia 2017, p. 15.

¹⁷ Direzione generale per la pesca marittima e l'acquacoltura.

¹⁸ Ispettorato Provinciale dell'Agricoltura.

¹⁹ Dipartimento delle politiche europee e internazionali e dello sviluppo rurale.

²⁰ Dipartimento dell'Ispettorato centrale della tutela della qualità e della repressione frodi dei prodotti agroalimentari.

²¹ Direzione generale della prevenzione e del contrasto alle frodi agroalimentari.

<p><i>la Borsa</i> (CONSOB) – investigates potential infringements of insider dealing and market manipulation law, regulates the Italian financial markets¹⁰</p>	<p>repression of agri-food products (ICQRF¹⁵)</p> <ul style="list-style-type: none"> - Revenue Agency (<i>Agenzia delle Entrate</i>) (solely administrative functions¹⁶) - Customs and Monopoly Agency (<i>Agenzia delle Dogane, Monopoli di Stato</i>) 	<ul style="list-style-type: none"> - Department of Forestry, Environmental and Agri-food Unit Command of the Carabinieri²² - Department of Maritime Fishing Department of the Port Authority Corps²³
<p>Authorities related to anti-corruption strategies:</p> <ul style="list-style-type: none"> - National Anti-Corruption Authority (<i>Autorità Nazionale Anticorruzione ANAC</i>) - General Prosecutor at the Supreme Court - Minister of Justice - Disciplinary section of the High Council for the Judiciary responsible for disciplinary action against judges and public prosecutors (“This disciplinary section acts as a court of first instance and all its decisions can be appealed to the Joint Sections of the Supreme Court”¹¹) - Head of corruption prevention and transparency 	<ul style="list-style-type: none"> - Agency for territorial cohesion <p>“External” control bodies</p> <ul style="list-style-type: none"> - Judicial authority - Judicial police - Court of Auditors <p>Regions:</p> <ul style="list-style-type: none"> - Managing Authorities - Certifying Authority - Audit Authority <p>Tax offices:</p> <ul style="list-style-type: none"> - Value added tax offices - Provincial tax commissions - Regional tax commissions - Revenue Agency (<i>Agenzia delle Entrate</i>) 	<p>Ministry of Economy and Finance (<i>Ministero dell’Economia e delle Finanze</i>)</p> <ul style="list-style-type: none"> - Tax police (<i>Guardia di Finanza</i>) · Function as: Tax police <i>Polizia tributaria</i> · Function as: judicial police <i>Polizia giudiziaria</i> (next to Carabinieri, forest rangers and correctional officers, Art. 57 CPP) - Customs authority (<i>Dogane</i>)

¹⁰ Website of CONSOB, <https://www.consob.it/web/consob-and-its-activities/consob>. Accessed 30 June 2025.

¹¹ Website of the Ministero della Giustizia, https://www.giustizia.it/giustizia/it/mg_2_1_4_2_2.wp#. Accessed 30 June 2025.

¹⁵ Dipartimento dell’Ispettorato centrale della tutela della qualità e della repressione frodi dei prodotti agroalimentari.

¹⁶ Nicolichia 2017, p. 15.

²² Comando Unità Forestali, Ambientali e Agroalimentari dei Carabinieri.

²³ Reparto Pesca Marittima del Corpo delle capitanerie di porto.

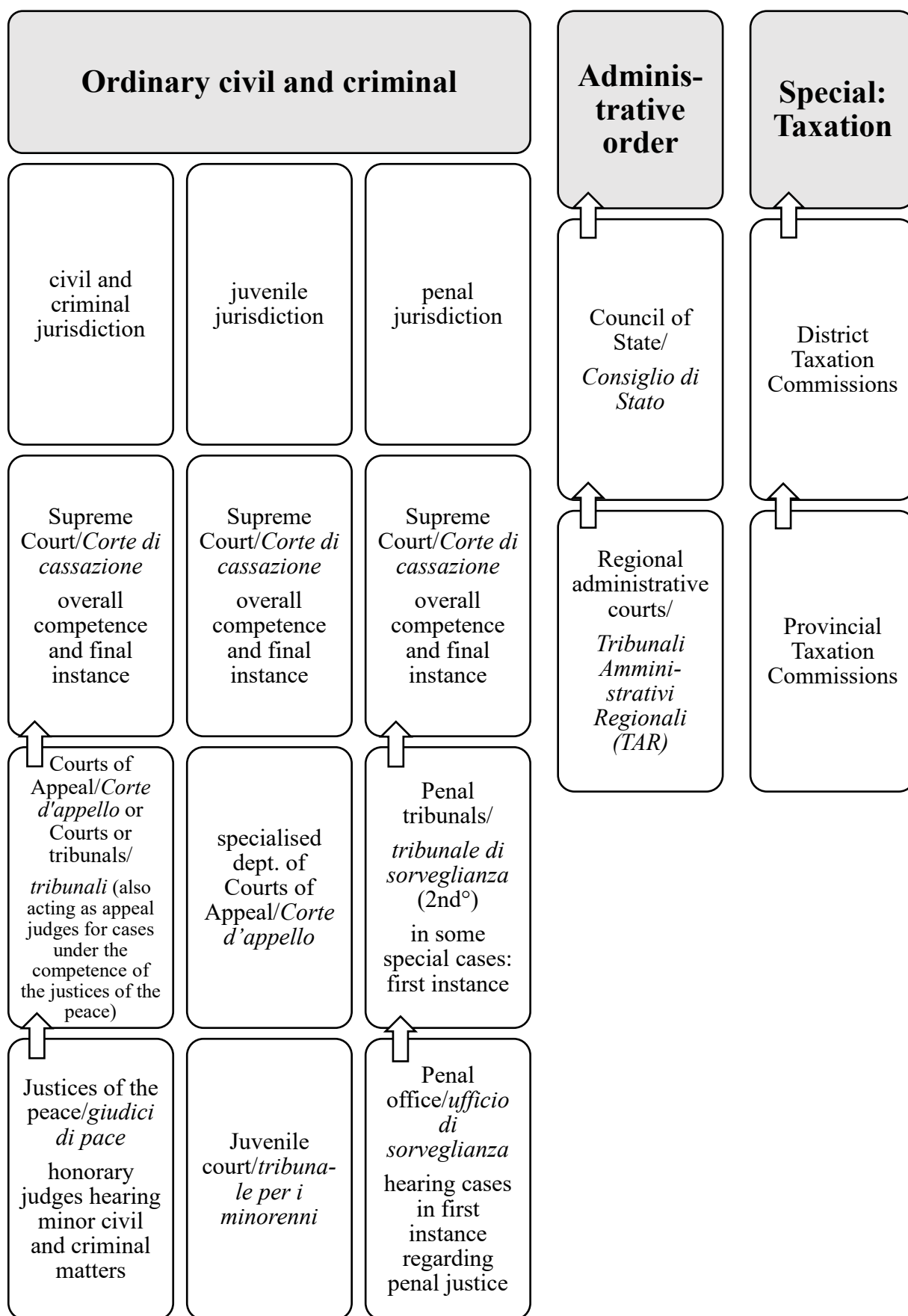
at the Administrative Judiciary (<i>responsabile della prevenzione della corruzione e della trasparenza RPCT</i>) ¹²		
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Source: The authors.

- 7 As we can see from internal decrees, press releases and court decisions, especially in more complex or high-profile cases, those involving organized crime, the National Anti-Mafia and Anti-Terrorism Directorate (*Direzione Nazionale Antimafia e Antiterrorismo – DNA*) takes over coordination and oversight. The Tax Police (*Guardia di Finanza*) plays a main role in nearly any EPPO investigation into probes of financial and tax-related crimes, often working alongside prosecutors.
- 8 The **pre-trial investigating judge** (*Giudice per le indagini preliminari*) ensures judicial oversight over restrictive measures such as arrests, wiretaps, or seizures. The General Prosecutor’s Office at the Court of Appeal supervises lower prosecutors regionally.
- 9 Italy also has specialised bodies: the **Italian Financial Intelligence Unit** (UIF) handles suspicious financial transaction reporting, while CONSOB, the securities regulator, investigates insider trading and market manipulation.
- 10 In the **anti-corruption domain**, the National Anti-Corruption Authority (ANAC) oversees transparency and prevention strategies against PIF offences. As stated above, the Head of Corruption Prevention and Transparency (RPCT) operates within administrative bodies. Disciplinary oversight over judges and prosecutors is handled by the Disciplinary Section of the High Council for the Judiciary, whose decisions can be appealed before the Supreme Court’s Joint Sections. The Minister of Justice and General Prosecutor at the Supreme Court complete the national supervisory framework.

¹² <https://www.giustizia-amministrativa.it/it/web/guest/responsabile-prevenzione-corruzione-e-trasparenza>. Accessed 30 June 2025.

Figure 1: Visualisation of the judicial and administrative order in Italy



III. Sources of law

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

1. National laws

a) EPPO-Investigation related laws and administrative Documents in Italy

- 13
- Legislative Decree No. 75 of 14 July 2020, implementing Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law
 - Legislative Decree No. 156 of 4 October 2022 – Corrective and supplementary provisions to Legislative Decree No. 75 of 14 July 2020, implementing Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law/*Decreto Legislativo 4 ottobre 2022, n. 156. Disposizioni correttive e integrative del decreto legislativo 14 luglio 2020, n. 75, di attuazione della direttiva (UE) 2017/1371, relativa alla lotta contro la frode che lede gli interessi finanziari dell'Unione mediante il diritto penale*
 - Legislative Decree New regulation of income and VAT offences under Legislative Decree February 2, 2021, n. 9 Provisions for the adaptation of national legislation to the provisions of Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of enhanced cooperation on the establishment of the European Public Prosecutor's Office "EPPO". (21G00012)/ *Decreto Legislativo 2 febbraio 2021, n. 9 Disposizioni per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1939 del Consiglio, del 12 ottobre 2017, relativo all'attuazione di una cooperazione rafforzata sull'istituzione della Procura europea "EPPO". (21G00012)*
 - Criminal Procedure Code/*Codice di Procedura Penale*
 - Legislative Decree March 10, 2000, n. 74 New regulation of offenses relating to income and value added taxes, pursuant to Article 9 of law no. 205 of 25 June 1999/*Decreto Legislativo 10 marzo 2000, n. 74 Nuova disciplina dei reati in materia di imposte sui redditi e sul valore aggiunto, a norma dell'articolo 9 della legge 25 giugno 1999, n. 205*
 - Anti-corruption and prevention of corruption law 2012 "Severino law" – Law no. 190, november 6, 2012 / *Disposizioni per la prevenzione e la repressione della corruzione e dell'illegalità nella pubblica amministrazione (G.U. n. 265 del 13 novembre 2012)*
 - Law No 287 of 10 October 1990 Rules for the protection of competition and the market / *Legge 10 ottobre 1990, n. 287 Norme per la tutela della concorrenza e del mercato*

b) Most relevant national laws in the investigations in Italy

14

- DPR 22 September 1988 n. 447 – Adoption of the code of criminal procedure/DECRETO DEL PRESIDENTE DELLA REPUBBLICA 22 settembre 1988, n. 447 – Approvazione del codice di procedura penale
- No 334 of 30 September 1989 – Regulations for the Implementation of the Code of Criminal Procedure / *Decreto 30 settembre 1989, n. 334 Regolamento per l'esecuzione del codice di procedura penale*
- Royal Decree 30 January 1941, n. 12 – Judicial System / *Regio Decreto 30 gennaio 1941, n. 12 Ordinamento giudiziario*
- Tax process code - Legislative Decree, Title II 31/12/1992 n° 546, GU 13/01/1993 / *Codice del processo tributario – Decreto legislativo, Titolo II 31/12/1992 n° 546, G.U. 13/01/1993*
- Anti-Mafia Code, Legislative Decree, 06/09/2011 No. 159, Official Gazette 28/09/2011 / *Codice antimafia, Decreto legislativo, 06/09/2011 n° 159, G.U. 28/09/2011*
- The Italian Constitution, Updated to Constitutional Law 11 February 2022, No. 1 / *La Costituzione italiana, Aggiornato alla Legge Costituzionale 11 Febbraio 2022, N. 1*
- Legislative Decree No 68 of 19 March 2001 – Adaptation of the tasks of the Guardia di finanza Corps, pursuant to Article 4 of Law No 78 of 31 March 2000 / *Decreto Legislativo 19 marzo 2001, n. 68 – Adeguamento dei compiti del Corpo della Guardia di finanza, a norma dell'articolo 4 della legge 31 marzo 2000, n. 78*
- Law No 69 of 22 April 2005, Provisions to bring domestic law into line with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, Official Gazette No 98 of 29 April 2005 / *Legge 22 aprile 2005, n. 69, Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri, Gazzetta Ufficiale n. 98 del 29 aprile 2005*
- Legislative Decree 21 June 2017 n. 108 – Implementing directive 2014/41/UE on the European Investigation Order/*Decreto Legislativo 21 giugno 2017, n. 108 – Norme di attuazione della direttiva 2014/41/UE del Parlamento europeo e del Consiglio, del 3 aprile 2014, relativa all'ordine europeo di indagine penale*

c) OLAF-Investigation related laws

- Administrative Process Code – Legislative Decree, 02/07/2010 n° 104, GU 07/07/2010 / *Codice del processo amministrativo – Decreto legislativo, 02/07/2010 n° 104, G.U. 07/07/2010*

15

- Tax process code – Legislative Decree, Title II 31/12/1992 n° 546, GU 13/01/1993 / *Codice del processo tributario – Decreto legislativo, Titolo II 31/12/1992 n° 546, G.U. 13/01/1993*
- Law 24 November 1981, n. 689 Changes to the penal system / *Legge 24 novembre 1981, n. 689 Modifiche al sistema penale*
- Law 21 December 1999, n. 526 – Provisions for the fulfilment of obligations deriving from Italy’s membership of the European Communities – Community law 1999 (in the area of structural funds) / *Legge 21 dicembre 1999, n. 526 – Disposizioni per l’adempimento di obblighi derivanti dall’appartenenza dell’Italia alle Comunità europee – Legge comunitaria 1999*
- Law of 10 October 1990, n. 287 Rules for the protection of competition and the market / *Legge 10 ottobre 1990, n. 287 Norme per la tutela della concorrenza e del mercato*
- Decree Of The President Of The Republic October 26, 1972, n. 633 – Establishment and regulation of value added tax / *Decreto Del Presidente Della Repubblica 26 ottobre 1972, n. 633 – Istituzione e disciplina dell’imposta sul valore aggiunto*
- Decree Of The President Of The Republic No 43 of 23 January 1973 Approval of the Consolidated Text of Customs Legislation / *Decreto Del Presidente Della Repubblica 23 gennaio 1973, n. 43 Approvazione del testo unico delle disposizioni legislative in materia doganale*
- Decree Of The President Of The Republic of 8. June 1982 no. 447 Implementation of directive (EEC) n. 77/435 relating to controls by the Member States of operations falling within the financing system of the European Agricultural Guidance and Guarantee Fund, Guarantee Section (EAGGF) / *Decreto Del Presidente Della Repubblica 8 giugno 1982, n. 447 Attuazione della direttiva (CEE) n. 77/435 relativa ai controlli, da parte degli Stati membri, delle operazioni che rientrano nel sistema di finanziamento del Fondo europeo agricolo di orientamento e di garanzia, sezione garanzia (F.E.O.G.A.)*
- Procurement Code 2022 – Text of Legislative Decree No. 50/2016 last updated by Law Decree No. 17/2022, converted, with amendments, by Law No. 34/2022 / *Codice degli Appalti 2022 – Testo del D.Lgs. n. 50/2016 aggiornato, da ultimo, dal D.L. n. 17/2022, convertito, con modificazioni, dalla Legge n. 34/2022*
- Decree Of The President Of The Republic No 600 of 29 September 1973 – Common provisions on the assessment of income taxes / *Decreto Del Presidente Della Repubblica 29 settembre 1973, n. 600 – Disposizioni comuni in materia di accertamento delle imposte sui redditi*

- Decree Of The President Of The Republic No 43 of 23 January 1973 Approval of the Consolidated Text of Customs Legislation / *Decreto Del Presidente Della Repubblica 23 gennaio 1973, n. 43 Approvazione del testo unico delle disposizioni legislative in materia doganale*

2. EPPO Adoption Act (Decreto Legislativo 2 febbraio 2021, n. 9)

Italy has issued a special EPPO Adoption Act in 2021, which was commented by legal scholars **quite critical**: 16

“The delegated legislator seems to have lost the opportunity to provide useful insights regarding the complete connection between the regulation and the national system. In particular, with regard to the decisions of the permanent chamber to be taken at the outcome of the investigations, the form of dialogue between Eppo and the national authority could have been better specified in the case of referral to the latter in the specific cases [...], and the consequent activities.”²⁴

In order to carry out **effective investigations**, we must, despite this critique take a closer look at the wording. The Adoption Law reads like follows: 17

Synopsis 1: Italian Decreto Legislativo 2 febbraio 2021, n. 9 – Act for the Execution of the European Public Prosecutor’s Office (Italian vs. English text) 18

<p>Decreto Legislativo 2 febbraio 2021, n. 9 Disposizioni per l’adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1939 del Consiglio, del 12 ottobre 2017, relativo all’attuazione di una cooperazione rafforzata sull’istituzione della Procura europea “EPPO”.</p>	<p>Legislative Decree February 2, 2021, n. 9 Provisions for the adaptation of national legislation to the provisions of Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of enhanced cooperation on the establishment of the European Public Prosecutor’s Office “EPPO”.</p>
<p>IL PRESIDENTE DELLA REPUBBLICA</p> <p>Visti gli articoli 76 e 87, quinto comma, della Costituzione; Visto l’articolo 14 della legge 23 agosto 1988, n. 400; Vista</p>	<p>THE PRESIDENT OF THE REPUBLIC</p> <p>Having regard to Articles 76 and 87, fifth paragraph, of the Constitution; Having regard to Article 14 of the law of 23</p>

²⁴ Lombardi 2021, pp. 927–950 (950): “Il legislatore delegato pare aver perso l’occasione per fornire spunti utili in merito al completo raccordo tra regolamento e sistema nazionale. In particolare, quanto alle decisioni della camera permanente da assumere all’esito delle indagini, si sarebbe potuto meglio precisare la forma di interlocuzione tra Eppo e autorità nazionale nel caso di rinvio a quest’ultima nelle ipotesi peculiari [106], e le attività conseguenti.”

For the drafting process of this Adoption law see Guagliard 2021, pp. 2, 22 et seq.

la legge 24 dicembre 2012, n. 234, recante norme generali sulla partecipazione dell'Italia alla formazione e all'attuazione della normativa e delle politiche dell'Unione europea; Vista la legge 4 ottobre 2019, n. 117, recante delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea - Legge di delegazione europea 2018 e, in particolare, l'articolo 4, che delega il Governo all'emanazione di uno o più decreti legislativi per l'adeguamento della normativa nazionale al regolamento (UE) 2017/1939 del Consiglio, del 12 ottobre 2017, relativo all'attuazione di una cooperazione rafforzata sull'istituzione della Procura europea ("EPPO"); Visto il regolamento (UE) 2017/1939 del Consiglio, del 12 ottobre 2017, relativo all'attuazione di una cooperazione rafforzata sull'istituzione della Procura europea ("EPPO"); Visto l'articolo 1 della legge 24 aprile 2020, n. 27, di conversione in legge, con modificazioni, del decreto-legge 17 marzo 2020, n. 18, e in particolare il comma 3, il quale dispone che i termini per l'adozione di decreti legislativi con scadenza tra il 10 febbraio 2020 e il 31 agosto 2020, che non siano scaduti alla data di entrata in vigore della legge, sono prorogati di tre mesi, decorrenti dalla data di scadenza di ciascuno di essi; Vista la deliberazione preliminare del Consiglio dei ministri, adottata nella riunione del 30 ottobre 2020; Acquisiti i pareri delle competenti Commissioni della Camera dei deputati e del Senato della Repubblica;

August 1988, n. 400; Having regard to the law of 24 December 2012, n. 234, containing general rules on Italy's participation in the formation and implementation of European Union legislation and policies; Having regard to the law of 4 October 2019, n. 117, delegating to the Government for the transposition of European directives and the implementation of other European Union acts – European Delegation Law 2018 and, in particular, Article 4, which delegates the Government to issue one or more Legislative Decrees for the adaptation of national legislation to Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of enhanced cooperation on the establishment of the European Public Prosecutor's Office ("EPPO"); Having regard to Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of enhanced cooperation on the establishment of the European Public Prosecutor's Office ("EPPO"); Having regard to Article 1 of the law of 24 April 2020, n. 27, of conversion into law, with amendments, of the decree-law of 17 March 2020, n. 18, and in particular paragraph 3, which provides that the deadlines for the adoption of Legislative Decrees expiring between 10 February 2020 and 31 August 2020, which have not expired on the date of entry into force of the law, are extended three months, starting from the expiry date of each of them; Having regard to the preliminary resolution of the Council of Ministers, adopted at the

<p>Vista la deliberazione del Consiglio dei ministri, adottata nella riunione del 29 gennaio 2021; Sulla proposta del Ministro per gli affari europei e del Ministro della giustizia, di concerto con il Ministro degli affari esteri e della cooperazione internazionale e il Ministro dell'economia e delle finanze;</p> <p>E m a n a il seguente decreto legislativo:</p>	<p>meeting of 30 October 2020; Having acquired the opinions of the competent Commissions of the Chamber of Deputies and of the Senate of the Republic; Having regard to the resolution of the Council of Ministers, adopted at the meeting of 29 January 2021; On the proposal of the Minister for European Affairs and the Minister of Justice, in agreement with the Minister of Foreign Affairs and International Cooperation and the Minister of Economy and Finance;</p> <p>issues the following Legislative Decree:</p>
<p>Art. 1 Oggetto</p> <p>1. Il presente decreto stabilisce le norme necessarie ad adattare l'ordinamento giuridico nazionale alle previsioni del regolamento (UE) 2017/1939 del Consiglio, del 12 ottobre 2017, relativo all'attuazione di una cooperazione rafforzata sull'istituzione della Procura europea ("EPPO"), di seguito denominato regolamento.</p>	<p>Art. 1 Object</p> <p>1. This decree establishes the rules necessary to adapt the national legal order to the provisions of Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of enhanced cooperation on the establishment of the European Public Prosecutor ("EPPO"), hereinafter referred to as the regulation.</p>
<p>Art. 2 Autorita' competente e procedimento per la designazione dei candidati all'incarico di procuratore europeo</p> <p>1. Il Consiglio superiore della magistratura e' l'autorita' competente alla designazione dei tre candidati all'incarico di procuratore europeo ai fini della nomina da parte del Consiglio dell'Unione europea, ai sensi dell'articolo 16, paragrafo 1, del regolamento.</p> <p>2. Entro trenta giorni dalla data di entrata in vigore del presente decreto, il Consiglio</p>	<p>Art. 2 Competent authority and procedure for the designation of candidates for the post of European prosecutor</p> <p>1. The High Council of the Judiciary is the competent authority for the designation of the three candidates for the post of European Prosecutor for the purposes of appointment by the Council of the European Union, pursuant to Article 16 (1) of the Regulation.</p> <p>2. Within thirty days from the date of entry into force of this decree, the High Council of the Judiciary determines with</p>

lio superiore della magistratura determina con propria delibera i criteri e la procedura per la valutazione delle dichiarazioni di disponibilità e la designazione dei candidati, nel rispetto delle qualifiche e dei requisiti previsti dall'articolo 16 del regolamento e dal presente decreto.

3. Possono candidarsi per l'incarico di procuratore europeo i magistrati, anche se collocati fuori dal ruolo organico della magistratura o in aspettativa, i quali alla data di presentazione della dichiarazione di disponibilità alla designazione non hanno compiuto il cinquantanovesimo anno di età e hanno conseguito almeno la quarta valutazione di professionalità.

4. I candidati allegano alla dichiarazione di disponibilità ogni elemento ritenuto utile a dimostrare una conoscenza adeguata della lingua di lavoro adottata dal collegio della Procura europea ai sensi dell'articolo 107, paragrafo 2, del regolamento, il possesso dei requisiti richiesti dall'articolo 16 del regolamento e dalla delibera del Consiglio superiore della magistratura di cui al comma 2.

5. Le dichiarazioni di disponibilità sono immediatamente trasmesse al Ministro della giustizia.

6. Il Consiglio superiore della magistratura valuta le dichiarazioni di disponibilità nel rispetto dei criteri di cui alla delibera prevista dal comma 2 e, nel termine di trenta giorni dalla scadenza del termine per la loro presentazione, approva con delibera motivata una proposta di designazione di tre candidati idonei e

its own resolution the criteria and procedure for the evaluation of the declarations of availability and the designation of candidates, in compliance with the qualifications and requirements provided for by Article 16 of the regulation and by this decree.

3. Magistrates may apply for the post of European Prosecutor, even if placed outside the organic role of the judiciary or on leave, who at the date of submission of the declaration of readiness for designation have not completed the fifty-ninth year of age and have achieved at least the fourth evaluation of professionalism.

4. Candidates attach to the declaration of availability any element deemed useful for demonstrating adequate knowledge of the working language adopted by the European Public Prosecutor's Office pursuant to Article 107, paragraph 2 of the Regulation, that they possess the requisites required by Article 16 of the regulation and by the resolution of the Higher Council of the Judiciary referred to in paragraph 2.

5. The declarations of availability are immediately forwarded to the Minister of Justice.

6. The High Council of the Judiciary evaluates the declarations of availability in compliance with the criteria referred to in the resolution provided for in paragraph 2 and, within thirty days from the expiry of the deadline for their presentation, approves with a motivated resolution a proposal for the designation of

la trasmette al Ministro della giustizia che, nei quindici giorni successivi, può formulare osservazioni, anche proponendo una diversa designazione.

7. Nei quindici giorni successivi alla ricezione delle osservazioni del Ministro della giustizia o, comunque, alla scadenza del termine per la formulazione delle stesse, il Consiglio superiore della magistratura designa i tre candidati con delibera motivata. Quando non accoglie le osservazioni formulate dal Ministro della giustizia ai sensi del comma 6, la delibera ne indica specificamente le ragioni. Il Ministro della giustizia procede alla immediata comunicazione dei nominativi dei candidati al Consiglio dell'Unione europea.

Art. 3 Collocamento fuori ruolo e trattamento economico del procuratore europeo

1. Il magistrato nominato al posto di procuratore europeo dal Consiglio dell'Unione europea è collocato fuori del ruolo organico della magistratura, fermo restando quanto disposto dall'articolo 58, secondo comma, del testo unico delle disposizioni concernenti lo statuto degli impiegati civili dello Stato, di cui al decreto del Presidente della Repubblica 10 gennaio 1957, n. 3. Il periodo di collocamento fuori ruolo per lo svolgimento delle funzioni di procuratore europeo non è computato nel termine decennale di cui all'articolo 50, comma 2, del decreto legislativo 5 aprile 2006, n. 160, e all'articolo 1, comma 68, della

three suitable candidates and forwards it to the Minister of Justice who, in the following fifteen days, can make observations, also proposing a different designation.

7. In the fifteen days following the receipt of the observations of the Minister of Justice or, in any case, at the expiry of the term for the formulation of the same, the Superior Council of the Judiciary designates the three candidates with a motivated resolution. When it does not accept the observations made by the Minister of Justice pursuant to paragraph 6, the resolution specifically indicates the reasons. The Minister of Justice immediately communicates the names of the candidates to the Council of the European Union.

Art. 3 Non-permanent placement and economic treatment of the European prosecutor

1. The magistrate appointed to the post of European prosecutor by the Council of the European Union is placed outside the organic role of the judiciary, without prejudice to the provisions of Article 58, second paragraph, of the consolidated text of the provisions concerning the statute of civil servants of the State, referred to in the decree of the President of the Republic 10 January 1957, n. 3. The period of placement outside the role for the performance of the functions of European prosecutor is not counted in the ten-year term referred to in Article 50, paragraph 2, of the Legislative Decree 5 April 2006, n. 160, and in Article

<p>legge 6 novembre 2012, n. 190.</p> <p>2. Dalla data di decorrenza degli effetti economici del contratto di assunzione sottoscritto con la Procura europea dal magistrato nominato procuratore europeo, cessa il trattamento economico erogato dal Ministero della giustizia a suo favore.</p>	<p>1, paragraph 68, of the law of 6 November 2012, n. 190.</p> <p>2. From the effective date of the economic effects of the employment contract signed with the European Public Prosecutor's Office by the magistrate appointed as European Prosecutor, the economic treatment provided by the Ministry of Justice in favour of him ceases.</p>
<p>Art. 4 Autorita' competente ai sensi dell'articolo 13, paragrafo 2, del regolamento</p> <p>1. Il Ministro della giustizia e' l'autorita' competente a concludere con il procuratore capo europeo l'accordo previsto dall'articolo 13, paragrafo 2, del regolamento.</p> <p>2. Ai fini di cui al comma 1, il Ministro della giustizia, acquisito ogni utile elemento conoscitivo, anche di natura statistica, concernente i reati attribuiti alla competenza della Procura europea, il numero delle persone sottoposte alle indagini ad essi relative, i tempi medi di definizione, la dislocazione sul territorio nazionale degli uffici di procura presso cui i procedimenti sono iscritti e l'eventuale sussistenza di profili di connessione con fenomeni di criminalita' organizzata, formula una proposta motivata relativa al numero e alla distribuzione funzionale e territoriale dei procuratori europei delegati e la trasmette, unitamente agli elementi conoscitivi acquisiti, al Consiglio superiore della magistratura.</p>	<p>Art. 4 Competent authority pursuant to Article 13 (2) of the Regulation</p> <p>1. The Minister of Justice is the competent authority to conclude with the European Chief Prosecutor the agreement provided for by Article 13, paragraph 2, of the regulation.</p> <p>2. For the purposes referred to in paragraph 1, the Minister of Justice, having acquired any useful information, including of a statistical nature, concerning the crimes attributed to the competence of the European Public Prosecutor's Office, the number of persons subjected to the investigations relating to them, the average times of definition, the location on the national territory of the prosecutor's offices at which the proceedings are registered and the possible existence of profiles of connection with phenomena of organized crime, formulates a motivated proposal relating to the number and functional and territorial distribution of European prosecutors delegates and transmits it, together with the cognitive elements acquired, to the Superior Council of the Judiciary.</p>

3. Il Consiglio superiore della magistratura esprime il proprio parere sulla proposta formulata ai sensi del comma 2 entro trenta giorni dalla sua ricezione. Scaduto tale termine, il Ministro della giustizia procede alla negoziazione dell'accordo di cui al comma 1 e, all'esito, alla adozione del decreto di cui all'articolo 10, comma 1. Quando non accoglie le osservazioni o la proposta alternativa formulate dal Consiglio superiore della magistratura, il Ministro della giustizia ne indica specificamente le ragioni nella proposta che sottopone al procuratore capo europeo.

4. L'accordo concluso con il procuratore capo europeo ai sensi del comma 1 e' comunicato senza ritardo dal Ministro della giustizia al Consiglio superiore della magistratura ed e' pubblicato nella Gazzetta Ufficiale della Repubblica italiana.

5. Le disposizioni dei commi 1, 2, 3 e 4 si applicano anche per le modifiche dell'accordo di cui al comma 1.

Art. 5 Autorita' competente e procedimento per la designazione dei procuratori europei delegati

1. Il Consiglio superiore della magistratura e' l'autorita' competente a designare i procuratori europei delegati ai fini della loro nomina da parte del collegio della Procura europea, ai sensi dell'articolo 17, paragrafo 1, del regolamento.

2. Entro trenta giorni dalla data di entrata in vigore del presente decreto, il Consig-

3. The High Council of the Judiciary expresses its opinion on the proposal formulated pursuant to paragraph 2 within thirty days of its receipt. After this deadline, the Minister of Justice proceeds with the negotiation of the agreement referred to in paragraph 1 and, upon completion, with the adoption of the decree referred to in Article 10, paragraph 1. When he does not accept the observations or the alternative proposal formulated by Superior Council of the Judiciary, the Minister of Justice specifically indicates the reasons for this in the proposal which he submits to the European Chief Prosecutor.

4. The agreement concluded with the European Chief Prosecutor pursuant to paragraph 1 is communicated without delay by the Minister of Justice to the High Council of the Judiciary and is published in the Official Gazette of the Italian Republic.

5. The provisions of paragraphs 1, 2, 3 and 4 also apply to amendments to the agreement referred to in paragraph 1.

Art. 5 Competent authority and procedure for the designation of European delegated prosecutors

1. The High Council of the Judiciary is the authority competent to designate the European Delegated Prosecutors for the purpose of their appointment by the College of the European Public Prosecutor's Office, pursuant to Article 17, paragraph 1, of the Regulation.

2. Within thirty days from the date of entry into force of this decree, the High Council of the Judiciary determines with

lio superiore della magistratura determina con propria delibera i criteri e la procedura per la valutazione delle dichiarazioni di disponibilità e la designazione dei candidati, nel rispetto delle qualifiche e dei requisiti previsti dall'articolo 17 del regolamento e dal presente decreto. Nell'individuazione dei criteri di valutazione specifico rilievo è accordato all'esperienza maturata dal magistrato nella conduzione di indagini relative a reati contro la pubblica amministrazione e in materia di criminalità economica e finanziaria, nonché alle sue competenze nel settore della cooperazione giudiziaria internazionale.

3. Possono candidarsi per l'incarico di procuratore europeo delegato i magistrati, anche se collocati fuori dal ruolo organico della magistratura o in aspettativa, i quali alla data di presentazione della dichiarazione di disponibilità alla designazione non hanno compiuto il cinquantanovesimo anno di età e hanno conseguito almeno la terza valutazione di professionalità.

4. I magistrati interessati presentano una dichiarazione di disponibilità in relazione a una o più delle sedi indicate nell'articolo 10, allegando ogni elemento ritenuto utile a dimostrare una conoscenza adeguata della lingua di lavoro adottata dal collegio della Procura europea ai sensi dell'articolo 107, paragrafo 2, del regolamento, nonché il possesso degli altri requisiti richiesti dall'articolo 17 del regolamento e dalla delibera del Consiglio superiore della magistratura di cui al comma 2.

its own resolution the criteria and procedure for the evaluation of the declarations of availability and the designation of candidates, in compliance with the qualifications and requirements provided for by Article 17 of the regulation and by this decree. In identifying the assessment criteria, specific importance is given to the experience gained by the magistrate in conducting investigations relating to crimes against the public administration and in the field of economic and financial crime, as well as to his skills in the field of international judicial cooperation.

3. Magistrates may apply for the post of European Delegated Prosecutor, even if placed outside the organic role of the judiciary or on leave, who at the date of presentation of the declaration of readiness for designation have not completed the fifty-ninth year of age, and have achieved at least the third evaluation of professionalism.

4. The magistrates concerned submit a declaration of availability in relation to one or more of the offices indicated in Article 10, attaching any element deemed useful to demonstrate an adequate knowledge of the working language adopted by the college of the European Public Prosecutor pursuant to Article 107, paragraph 2, of the regulation, as well as the possession of the other requisites required by Article 17 of the regulation and by the resolution of the

<p>5. Il Consiglio superiore della magistratura valuta, in relazione a ciascuna delle sedi indicate nell'articolo 10, le dichiarazioni di disponibilita' pervenute nel rispetto delle disposizioni cui all'articolo 13, commi 3, 4 e 5, del decreto legislativo 5 aprile 2006, n. 160, e dei criteri di cui alla delibera prevista dal comma 2. Non si applica il termine previsto dall'articolo 194 del regio decreto 30 gennaio 1941, n. 12.</p> <p>6. Entro trenta giorni dalla presentazione delle dichiarazioni di disponibilita', il Consiglio superiore della magistratura designa con delibera motivata, per ciascuna delle sedi indicate nell'articolo 10, un numero di magistrati idonei corrispondente a quello indicato dal procuratore capo europeo all'esito della negoziazione di cui all'articolo 13, paragrafo 2, del regolamento.</p> <p>7. Il Ministro della giustizia procede alla immediata comunicazione al procuratore capo europeo dei nominativi dei magistrati designati.</p>	<p>High Council of the Judiciary referred to in paragraph 2.</p> <p>5. The Superior Council of the Judiciary evaluates, in relation to each of the offices listed in Article 10, the declarations of availability received in compliance with the provisions of article 13, paragraphs 3, 4 and 5, of Legislative Decree no. 160, and of the criteria referred to in the resolution provided for by paragraph 2. The deadline provided for by article 194 of the royal decree of January 30, 1941, no. 12.</p> <p>6. Within thirty days of the submission of the declarations of availability, the Superior Council of the Judiciary shall designate by reasoned resolution, for each of the offices indicated in article 10, a number of suitable judges corresponding to that indicated by the European Chief Prosecutor at the outcome of the trading referred to in Article 13 (2) of the Regulation.</p> <p>7. The Minister of Justice will immediately notify the European Chief Prosecutor of the names of the designated magistrates.</p>
<p>Art. 6 Provvedimenti conseguenti alla nomina dei procuratori europei delegati</p> <p>1. Il Consiglio superiore della magistratura destina i magistrati nominati procuratori europei delegati alle sedi indicate nell'articolo 10, disponendo il trasferimento e, se necessario, il mutamento di funzioni degli stessi nel rispetto delle disponibilita' manifestate in relazione alle sedi di tramutamento e delle disposizioni cui all'articolo 13, commi 3, 4</p>	<p>Art. 6 Provisions resulting from the appointment of the European delegated prosecutors</p> <p>1. The High Council of the Judiciary appoints the judges appointed as European delegated prosecutors to the offices indicated in article 10, arranging for their transfer and, if necessary, the change of their functions in compliance with the availability expressed in relation to the transformation offices and provisions referred to in article 13, paragraphs 3, 4</p>

e 5 del decreto legislativo 5 aprile 2006, n. 160.

2. Con la delibera di trasferimento, qualora l'accordo di cui all'articolo 4, comma 1, preveda che il magistrato nominato procuratore europeo delegato eserciti anche le funzioni di pubblico ministero nazionale, il Consiglio superiore della magistratura dispone l'esonero parziale dall'attività giudiziaria ordinaria in misura corrispondente a quella convenuta nell'accordo. Le funzioni di pubblico ministero nazionale sono esercitate presso la procura della Repubblica di assegnazione di cui al comma 1.

3. Alla cessazione dell'incarico di procuratore europeo delegato, il magistrato ha diritto ad essere riassegnato, a domanda, alla sede di provenienza, con le precedenti funzioni, anche in soprannumero da riassorbire con le successive vacanze. In mancanza di una domanda di riassegnazione alla sede di provenienza o di trasferimento ad altra sede, il magistrato cessato dall'incarico di procuratore europeo delegato resta assegnato alla procura della Repubblica cui è stato trasferito ai sensi del comma 1, anche in soprannumero da riassorbire con le successive vacanze.

4. Il Consiglio superiore della magistratura richiede, con cadenza annuale, alla Procura europea di comunicare se nei confronti dei magistrati nominati procuratori europei delegati siano stati avviati o definiti procedimenti disciplinari, ovvero se, nei casi agli stessi assegnati, il

and 5 of the Legislative Decree 5 April 2006, n. 160.

2. With the transfer resolution, if the agreement referred to in Article 4, paragraph 1, provides that the magistrate appointed as European Delegated Prosecutor also exercises the functions of national public prosecutor, the High Council of the Judiciary orders partial exemption from ordinary judicial activity to an extent corresponding to that agreed in the agreement. The functions of national public prosecutor are exercised at the public prosecutor's office of assignment referred to in paragraph 1.

3. Upon the termination of the appointment as EDP, the magistrate shall be entitled, upon request, to be reassigned to his or her previous post, with the same functions as before, even in an excess position to be absorbed through subsequent vacancies. In the absence of a request for reassignment to the previous post or for transfer to another post, the magistrate whose appointment as EDP has ended shall remain assigned to the Public Prosecutor's Office to which he or she was transferred pursuant to paragraph 1, likewise in an excess position to be absorbed through subsequent vacancies.

4. The Supreme Council of the Judiciary requests, on an annual basis, the European Public Prosecutor's Office to communicate whether disciplinary proceedings have been initiated or defined against the judges appointed as European Delegated Prosecutors, or if, in the cases

procuratore europeo incaricato della supervisione abbia adottato la decisione di svolgere l'indagine di persona ai sensi dell'articolo 28, paragrafo 4, lettera c), del regolamento.

5. Fermo quanto previsto dal comma 3 e dall'articolo 11, comma 1, il procuratore europeo delegato informa senza ritardo il procuratore generale presso la Corte di cassazione e il Ministro della giustizia:

a) quando riceve formale notizia dell'avvio di un procedimento disciplinare nei suoi confronti per motivi connessi alle responsabilità che gli derivano dal regolamento; b) quando, in un caso assegnatogli, la camera permanente assume una decisione di riassegnazione per i motivi di cui all'articolo 28, paragrafo 3, lettera b), del regolamento o il procuratore europeo adotta la decisione di svolgere l'indagine di persona ai sensi dell'articolo 28, paragrafo 4, lettera c), del regolamento.

Art. 7 Trattamento economico e regime contributivo dei procuratori europei delegati

1. Dalla data di decorrenza degli effetti economici del contratto di assunzione sottoscritto con la Procura europea dal magistrato nominato procuratore europeo delegato, cessa il trattamento economico erogato a suo favore dal Ministero della giustizia. In caso di esonero parziale, il Ministero della giustizia provvede a rimborsare alla Procura europea la quota di trattamento economico spettante per lo svolgimento dell'ordinaria attività di procuratore nazionale.

assigned to them, the European Prosecutor in charge of supervision has taken the decision to conduct the investigation in person pursuant to Article 28 (4) (c) of the Regulation.

5. Without prejudice to the provisions of paragraph 3 and article 11, paragraph 1, the European delegated prosecutor shall inform the Attorney General at the Court of Cassation and the Minister of Justice without delay: a) when he receives formal notice of the initiation of proceedings disciplining him for reasons connected with the responsibilities deriving from the regulation; b) when, in a case assigned to him, the permanent chamber takes a reassignment decision for the reasons referred to in Article 28 (3) (b) of the Regulation or the European Public Prosecutor takes the decision to conduct the investigation in person pursuant to Article 28 (4) (c) of the Regulation.

Art. 7 Economic treatment and contribution regime of European delegated prosecutors

1. From the effective date of the economic effects of the employment contract signed with the European Public Prosecutor's Office by the magistrate appointed as European Delegated Prosecutor, the economic treatment provided to him by the Ministry of Justice ceases. In the event of partial exemption, the Ministry of Justice will reimburse the European Public Prosecutor's office the portion of the economic treatment due for carrying out the ordinary activity of national prosecutor.

<p>2. In ogni caso, il periodo di servizio prestato nella qualita' di procuratore europeo delegato e' computato ai fini della progressione economica per anzianita' di servizio e agli effetti del trattamento di quiescenza e di previdenza, da determinarsi con riferimento al trattamento economico goduto alla data di assunzione dell'incarico e alla progressione di esso per anzianita' di servizio.</p> <p>3. Il versamento dei contributi previdenziali, commisurati sulla base del trattamento economico individuato ai sensi del comma 2, e' integralmente posto a carico del Ministero della giustizia, fatto salvo il rimborso all'amministrazione della quota previdenziale posta a carico del magistrato nominato procuratore europeo delegato, secondo le aliquote vigenti.</p>	<p>2. In any case, the period of service provided in the capacity of delegated European prosecutor is calculated for the purposes of economic progression by length of service and for the effects of retirement and social security benefits, to be determined with reference to the economic treatment enjoyed on the date of assumption of the office and the progression of it by seniority of service.</p> <p>3. The payment of social security contributions, commensurate on the basis of the economic treatment identified pursuant to paragraph 2, is fully charged to the Ministry of Justice, without prejudice to the reimbursement to the administration of the social security quota paid by the magistrate appointed European delegated prosecutor, according to the rates in force.</p>
<p>Art. 8 Modifiche alla tabella B, annessa alla legge 5 marzo 1991, n. 71</p> <p>1. La tabella B, annessa alla legge 5 marzo 1991, n. 71, e' sostituita dalla tabella B allegata al presente decreto, con l'inclusione, alla lettera L), dei magistrati destinati alle funzioni di procuratori europei delegati.</p>	<p>Art. 8 Amendments to table B, annexed to the law of 5 March 1991, n. 71</p> <p>1. Table B, annexed to the law of 5 March 1991, n. 71, is replaced by table B attached to this decree, with the inclusion, under letter L), of the magistrates assigned to the functions of European delegated prosecutors.</p>
<p>Art. 9 Poteri dei procuratori europei delegati e del procuratore europeo</p> <p>1. In relazione ai procedimenti per i quali la Procura europea ha assunto la decisione di avviare o avocare un'indagine, i procuratori europei delegati esercitano, in via esclusiva e fino alla definizione del procedimento, nell'interesse della Procura europea e conformemente alle</p>	<p>Art. 9 Powers of the European Delegated Prosecutors and the European Prosecutor</p> <p>1. In relation to the proceedings for which the European Public Prosecutor has taken the decision to initiate or evocate an investigation, the European Delegated Prosecutors shall exercise, exclusively and up to the definition of the proceedings, in the interest of the European</p>

disposizioni del regolamento e del presente decreto, le funzioni e i poteri spettanti ai pubblici ministeri nazionali.

2. Ferme in ogni caso le regole ordinarie sulla competenza del giudice, i procuratori europei delegati esercitano le funzioni requirenti sull'intero territorio nazionale, indipendentemente dalla sede di assegnazione.

3. I procuratori europei delegati, nell'esercizio delle funzioni di cui al comma 1, non sono soggetti ai poteri di direzione attribuiti ai procuratori della Repubblica dall'articolo 70 del regio decreto 30 gennaio 1941, n. 12, e dagli articoli 1, 2, 3 e 4, comma 1, del decreto legislativo 20 febbraio 2006, n. 106, ne' all'attivit  di vigilanza del procuratore generale presso la corte di appello prevista dall'articolo 6 del decreto legislativo 20 febbraio 2006, n. 106. Non si applicano gli articoli 53, 371-bis, 372, 412, 413 e 421-bis, commi 1, secondo periodo, e 2, del codice di procedura penale.

4. Nel caso previsto dall'articolo 28, paragrafo 4, del regolamento, il procuratore europeo esercita le funzioni requirenti secondo quanto previsto dai commi 1 e 2.

Art. 10 Sedi dei procuratori europei delegati

1. Nei quindici giorni successivi alla pubblicazione nella Gazzetta Ufficiale della Repubblica italiana dell'accordo di cui all'articolo 4, comma 1, il Ministro della giustizia determina con proprio decreto la pianta organica dei procuratori

Public Prosecutor's office and in accordance with the provisions of the regulation and of this decree, the functions and powers of national prosecutors.

2. Without prejudice to the ordinary rules on the competence of the judge, the European delegated prosecutors exercise the prosecuting functions throughout the national territory, regardless of the place of assignment.

3. The European delegated prosecutors, in the exercise of the functions referred to in paragraph 1, are not subject to the direction powers attributed to the public prosecutors of the Republic by article 70 of the royal decree no. 12, and by articles 1, 2, 3 and 4, paragraph 1, of the Legislative Decree 20 February 2006, n. 106, nor to the supervisory activity of the Attorney General at the appeal court provided for by article 6 of the Legislative Decree 20 February 2006, n. 106. Articles 53, 371-bis, 372, 412, 413 and 421-bis, paragraphs 1, second sentence, and 2, of the Code of Criminal Procedure do not apply.

4. In the case envisaged by article 28, paragraph 4, of the regulation, the European prosecutor shall exercise the investigative functions in accordance with the provisions of paragraphs 1 and 2.

Art. 10 Locations of the European Delegated Prosecutors

1. In the fifteen days following the publication in the Official Gazette of the Italian Republic of the agreement referred to in Article 4, paragraph 1, the Minister of Justice determines by decree the organic

europei delegati in conformita' alle previsioni dell'accordo, individuando le sedi di servizio dei procuratori europei delegati presso una o piu' procure della Repubblica dei capoluoghi di distretto e modificando, ove necessario, le piante organiche degli uffici giudiziari, nell'ambito delle attuali dotazioni organiche. Allo stesso modo il Ministro della giustizia procede in caso di successive modifiche dell'accordo ai sensi dell'articolo 4, comma 5.

2. Nei trenta giorni successivi alla pubblicazione nella Gazzetta

Ufficiale della Repubblica italiana del decreto del Ministro della giustizia di cui al comma 1, previa determinazione del numero, della qualifica professionale, delle specifiche competenze anche linguistiche e dei requisiti di anzianita' e curricolari richiesti, il Ministero della giustizia individua, a mezzo di interpello nazionale riservato al personale di ruolo dell'Amministrazione giudiziaria, le unita' di personale amministrativo da assegnarsi alle sedi di servizio dei procuratori europei delegati. Nello stesso termine, sentiti i dirigenti delle procure della Repubblica individuate ai sensi del comma 1, il Ministero della giustizia adotta le misure necessarie ad assicurare la disponibilita', da parte di detti uffici, di locali e di beni strumentali idonei a consentire ai procuratori europei delegati l'esercizio delle funzioni e dei compiti loro assegnati dal regolamento in condizioni di eguaglianza rispetto ai pubblici ministeri nazionali. I provvedimenti di

plant of the European delegated prosecutors in accordance with the provisions of the agreement, identifying the service offices of the European delegated prosecutors in one or more public prosecutors' offices of the district capitals and modifying, where necessary, the organic plans of the judicial offices, within the context of the current organic endowments. Similarly, the Minister of Justice proceeds in the event of subsequent amendments to the agreement pursuant to article 4, paragraph 5.

2. Within thirty days following publication in the Journal Official of the Italian Republic of the decree of the Minister of Justice referred to in paragraph 1, after determining the number, professional qualification, specific skills including linguistic and seniority and curricular requirements, the Ministry of Justice identifies, by means of a ruling reserved for permanent staff of the Judicial Administration, the units of administrative staff to be assigned to the service offices of the European delegated prosecutors. Within the same term, having consulted the managers of the public prosecutors identified pursuant to paragraph 1, the Ministry of Justice adopts the necessary measures to ensure the availability, by said offices, of premises and instrumental goods suitable for allowing European prosecutors delegates the exercise of the functions and tasks assigned to them by the regulation in conditions of equality with respect to national prosecutors. The measures referred to in this paragraph

cui al presente comma sono assunti nei limiti delle risorse umane, strumentali e finanziarie disponibili a legislazione vigente e senza nuovi o maggiori oneri a carico della finanza pubblica.

3. Nei sessanta giorni successivi alla pubblicazione nella Gazzetta Ufficiale della Repubblica italiana del decreto del Ministro della giustizia di cui al comma 1, i dirigenti delle procure della Repubblica individuate quali sedi dei procuratori europei delegati adottano i provvedimenti organizzativi necessari a favorire la piena integrazione dei procuratori europei delegati nell'ambito dell'ufficio e a dotarli delle unità di personale amministrativo, dei locali e dei beni strumentali di cui al comma 2, assicurando in ogni caso l'eguaglianza di trattamento rispetto ai procuratori pubblici ministeri nazionali nelle condizioni generali di lavoro e nella fruizione dell'ambiente lavorativo.

4. I provvedimenti indicati al comma 3 sono immediatamente comunicati al Ministero della giustizia e al Consiglio superiore della magistratura.

5. Fermo quanto previsto dai commi 2, 3 e 4, il Ministro della giustizia e il Consiglio superiore della magistratura assumono, nell'ambito e nei limiti delle rispettive attribuzioni, le iniziative necessarie a favorire la piena integrazione dei procuratori europei delegati presso gli uffici di procura cui sono destinati e ad agevolare l'assolvimento delle funzioni e dei compiti loro assegnati dal regolamento.

are taken within the limits of human, instrumental and financial resources available under current legislation and without new or greater charges for public finance.

3. In the sixty days following the publication in the Official Gazette of the Italian Republic of the decree of the Minister of Justice referred to in paragraph 1, the managers of the public prosecutors identified as the offices of the European delegated prosecutors shall adopt the organizational measures necessary to favour the full integration of European delegated prosecutors within the office and to equip them with the administrative staff units, premises and capital goods referred to in paragraph 2, ensuring in any case equal treatment with respect to national prosecutors in the general working conditions and in the use of the working environment.

4. The measures indicated in paragraph 3 are immediately communicated to the Ministry of Justice and the High Council of the Judiciary.

5. Without prejudice to the provisions of paragraphs 2, 3 and 4, the Minister of Justice and the High Council of the Judiciary shall undertake, within and within the limits of their respective powers, the initiatives necessary to favour the full integration of the European delegated prosecutors to the public prosecutors' offices to which they are intended and to facilitate the performance of the functions and tasks assigned to them by the regulation.

Art. 11 Valutazioni di professionalità dei procuratori europei delegati

1. Ai fini della procedura di valutazione della professionalità di cui all'articolo 11 del decreto legislativo 5 aprile 2006, n. 160, come modificato dall'articolo 2, comma 2, della legge 30 luglio 2007, n. 111, il Consiglio superiore della magistratura richiede alla Procura europea di trasmettere:

- a) un rapporto informativo sull'attività svolta dal magistrato nominato procuratore europeo delegato e i relativi dati statistici;
- b) copia dei precedenti rapporti di valutazione del rendimento;
- c) notizie relative alle eventuali decisioni di riassegnazione dei casi assunte dalla camera permanente per i motivi di cui all'articolo 28, paragrafo 3, del regolamento;
- d) un aggiornamento delle informazioni di cui all'articolo 6, comma 4.

2. La documentazione di cui al comma 1, unitamente a quella in precedenza acquisita sull'attività del procuratore europeo delegato ai sensi dell'articolo 6, comma 4, e' trasmessa dal Consiglio superiore della magistratura al Consiglio giudiziario della Corte di appello di Roma ed e' utilizzata ai fini delle valutazioni di professionalità, ai sensi dell'articolo 11 del decreto legislativo 5 aprile 2006, n. 160.

Art. 11 Evaluations of professionalism of European delegated prosecutors

1. For the purposes of the professionalism assessment procedure referred to in Article 11 of Legislative Decree no. 160, as amended by article 2, paragraph 2, of law no. 111, the High Council of the Judiciary requests the European Public Prosecutor's Office to transmit:

- a) an information report on the activity carried out by the magistrate appointed as European delegated prosecutor and the related statistical data;
- b) copy of previous performance evaluation reports;
- c) information relating to any decisions to reassign cases taken by the permanent chamber for the reasons referred to in Article 28 (3) of the Regulation;
- d) an update of the information referred to in article 6, paragraph 4.

2. The documentation referred to in paragraph 1, together with that previously acquired on the activity of the European delegated prosecutor pursuant to Article 6, paragraph 4, is transmitted by the High Council of the Judiciary to the Judicial Council of the Court of Appeal of Rome and is used for the purposes of professionalism assessments, pursuant to article 11 of the Legislative Decree 5 April 2006, n. 160.

Art. 12 Comunicazione al procuratore capo europeo di provvedimenti riguardanti i procuratori europei delegati

1. I provvedimenti che comportano la cessazione dal servizio, i provvedimenti di trasferimento di ufficio e i provvedimenti disciplinari, anche di natura cautelare, adottati per motivi non connessi alle responsabilità derivanti dal regolamento nei confronti dei magistrati nominati procuratori europei delegati, sono eseguiti solo dopo averne dato comunicazione al procuratore capo europeo.
2. In caso di trasferimento di ufficio, il Consiglio superiore della magistratura determina la nuova sede di assegnazione del magistrato acquisito il parere del procuratore capo europeo.
3. Ai fini dell'adozione dei provvedimenti di cui ai commi 1 e 2, possono essere richiesti, ove rilevanti, atti, documenti e informazioni alla Procura europea.

Art. 13 Procedimenti disciplinari nei confronti dei procuratori europei delegati per motivi connessi alle responsabilità derivanti dal regolamento.

1. Quando è fondato su motivi connessi alle responsabilità derivanti dal regolamento, il procedimento disciplinare nei confronti del magistrato nominato procuratore europeo delegato può essere iniziato solo dopo aver acquisito il consenso del procuratore capo europeo.

Art. 12 Communication to the European Chief Prosecutor of measures concerning the European Delegated Prosecutors

1. Measures involving termination of service, office transfer measures and disciplinary measures, also of a precautionary nature, adopted for reasons not related to the responsibilities deriving from the regulation towards the judges appointed as European delegated prosecutors, are carried out only after have notified the European Chief Prosecutor.
2. In the event of a transfer of office, the High Council of the Judiciary determines the new seat for the assignment of the magistrate having obtained the opinion of the European Chief Prosecutor.
3. For the purposes of adopting the measures referred to in paragraphs 1 and 2, deeds, documents and information may be requested from the European Public Prosecutor, where relevant.

Art. 13 Disciplinary proceedings against European Delegated Prosecutors for reasons connected with the responsibilities deriving from regulation.

1. When based on reasons connected with the responsibilities deriving from the regulation, disciplinary proceedings against the magistrate appointed European Delegated Prosecutor can only be initiated after having obtained the consent of the European Chief Prosecutor.

2. Il procuratore generale presso la Corte di cassazione richiede al procuratore capo europeo di esprimere il consenso ai sensi del comma 1 una volta ricevuta la richiesta di indagini dal Ministro della giustizia o prima di effettuare la comunicazione al Consiglio superiore della magistratura prevista dall'articolo 14, comma 3, del decreto legislativo 23 febbraio 2006, n. 109.

3. In caso di diniego del consenso, assunta ogni utile informazione, il procuratore generale presso la Corte di cassazione o, quando abbia richiesto di promuovere l'azione disciplinare, il Ministro della giustizia possono richiedere nei successivi trenta giorni al collegio della Procura europea di riesaminare la questione.

4. La richiesta del procuratore generale presso la Corte di cassazione sospende il decorso dei termini previsti dall'articolo 15, commi 1 e 1-bis, del decreto legislativo 23 febbraio 2006, n. 109, sino al momento in cui perviene notizia del consenso espresso dal procuratore capo europeo o, nell'ipotesi prevista dal comma 3, della decisione favorevole del collegio della Procura europea. Nei rimanenti casi, i termini riprendono a decorrere a seguito della cessazione dell'incarico di procuratore europeo delegato, di cui il Consiglio superiore della magistratura informa tempestivamente il procuratore generale presso la Corte di cassazione ai fini dell'avvio del procedimento disciplinare.

2. The Attorney General at the Court of Cassation requests the European Chief Prosecutor to express consent pursuant to paragraph 1 upon receipt of the request for investigations by the Minister of Justice or before making the communication to the High Council of the Judiciary provided for in article 14, paragraph 3, of the Legislative Decree 23 February 2006, n. 109.

3. In case of refusal of consent, having received all useful information, the Attorney General at the Court of Cassation or, when he has requested to initiate disciplinary action, the Minister of Justice may request in the following thirty days the college of the European Public Prosecutor's office to review the matter.

4. The request of the Attorney General to the Court of Cassation suspends the expiry of the terms provided for in Article 15, paragraphs 1 and 1-bis, of Legislative Decree 23 February 2006, no. 109, until the moment in which news is received of the consent expressed by the European Chief Prosecutor or, in the hypothesis provided for by paragraph 3, of the favourable decision of the college of the European Public Prosecutor's office. In the remaining cases, the terms start to run again following the termination of the mandate of European Delegated Prosecutor, of which the High Council of the Judiciary promptly informs the Attorney General at the Court of Cassation in order to initiate disciplinary proceedings.

5. L'azione disciplinare non puo' comunque essere iniziata o proseguita quando la sussistenza dei fatti oggetto di addebito o della responsabilita' del magistrato e' stata esclusa dal collegio della Procura europea con decisione irrevocabile.

6. Quando i fatti contestati nell'addebito disciplinare, ovvero altre circostanze comunque rilevanti ai fini del procedimento disciplinare, hanno formato oggetto di procedimento disciplinare da parte del collegio della Procura europea, il procuratore generale presso la Corte di cassazione richiede alla Procura europea la trasmissione degli atti pertinenti.

7. La documentazione di cui al comma 6 e' utilizzabile per le determinazioni inerenti all'esercizio dell'azione disciplinare e nel giudizio disciplinare. La rinnovazione dell'esame dei testimoni e' ammessa solo su fatti o circostanze diversi da quelli oggetto delle precedenti dichiarazioni o se ritenuta necessaria sulla base di specifiche esigenze.

8. In caso di condanna, nella commisurazione delle sanzioni di cui all'articolo 5, comma 1, lettere c), d) ed e), del decreto legislativo 23 febbraio 2006, n. 109, si tiene conto di quella gia' eventualmente irrogata dal collegio della Procura europea per il medesimo fatto.

5. Disciplinary action cannot in any case be initiated or continued when the existence of the facts subject to the charge or the responsibility of the magistrate has been excluded from the college of the European Public Prosecutor's office with an irrevocable decision.

6. When the facts disputed in the disciplinary charge, or other circumstances in any case relevant for the purposes of the disciplinary proceedings, have been the subject of disciplinary proceedings by the European Public Prosecutor's Office, the Attorney General at the Court of Cassation requests the European Public Prosecutor's office to transmit of the relevant acts.

7. The documentation referred to in paragraph 6 can be used for the decisions relating to the exercise of disciplinary action and in disciplinary proceedings. The renewal of the examination of witnesses is allowed only on facts or circumstances other than those covered by the previous declarations or if deemed necessary on the basis of specific needs.

8. In the event of a conviction, in the measurement of the sanctions referred to in Article 5, paragraph 1, letters c), d) and e), of the Legislative Decree of 23 February 2006, n. 109, that already possibly imposed by the college of the European Public Prosecutor's office for the same fact is taken into account.

Art. 14 Comunicazione e iscrizione di notizie di reato di competenza della Procura europea

1. Le comunicazioni di cui all'articolo 347 del codice di procedura penale, le denunce, le querele, gli esposti e gli ulteriori atti comunque denominati che hanno ad oggetto reati in relazione ai quali la Procura europea potrebbe esercitare la sua competenza ai sensi degli articoli 22 e 25, paragrafi 2 e 3, del regolamento sono presentati o trasmessi, oltre che al pubblico ministero nazionale, al procuratore europeo delegato.

2. Quando riceve o acquisisce di propria iniziativa notizia di uno dei reati di cui al comma 1, il pubblico ministero provvede agli adempimenti previsti dall'articolo 335, primo comma, del codice di procedura penale, se la Procura europea non ha già comunicato di esercitare la sua competenza e risulta necessario procedere al compimento di atti urgenti o vi è comunque motivo di ritenere che un ritardo nell'avvio delle indagini possa comprometterne l'esito.

3. Fuori dai casi previsti dal comma 2, il pubblico ministero dispone l'annotazione della notizia di reato in apposito registro, tenuto in forma automatizzata, che il Ministro della giustizia istituisce con proprio decreto da adottare entro trenta giorni dall'entrata in vigore del presente decreto.

Art. 14 Communication and registration of crime reports within the competence of the European Public Prosecutor's Office [by the Italian regional offices]

1. The communications referred to in Article 347 of the Code of Criminal Procedure, the reports, complaints, allegations and subsequent other acts, however named, which concern crimes in relation to which the European Public Prosecutor's office could exercise its competence pursuant to Articles 22 and 25 (2) and 25 (3) of the Regulation are presented or transmitted, in addition to the national prosecutor, to the European Delegated Prosecutor.

2. When he/she receives or acquires news of one of the offenses referred to in paragraph 1 on his own initiative, the public prosecutor shall fulfill the obligations provided for in article 335, first paragraph, of the Code of Criminal Procedure, if the European Public Prosecutor's office has not already communicated to exercise its competence and it is necessary to proceed with the completion of urgent acts or there is in any case reason to believe that a delay in the start of the investigation could compromise the outcome.

3. Apart from the cases provided for in paragraph 2, the public prosecutor orders the notation of the crime report in a special register, kept in an automated form, which the Minister of Justice establishes with his own decree to be adopted within thirty days from the entry into force of the this decree.

<p>4. Quando la Procura europea comunica che non intende esercitare la sua competenza e, in ogni caso, decorsi trenta giorni dalla annotazione prevista dal comma 3, il pubblico ministero procede immediatamente agli adempimenti previsti dall'articolo 335, comma 1, del codice di procedura penale.</p> <p>5. Il pubblico ministero informa la Procura europea dell'iscrizione del procedimento e dell'avvio delle indagini preliminari ai sensi del comma 2.</p>	<p>4. When the European Public Prosecutor's office announces that it does not intend to exercise its competence and, in any case, after thirty days from the annotation referred to in paragraph 3, the public prosecutor immediately proceeds with the obligations provided for by Article 335, paragraph 1, of the Code of criminal Procedure.</p> <p>5. The public prosecutor informs the European Public Prosecutor's office of the registration of the procedure and the start of the preliminary investigations pursuant to paragraph 2.</p>
<p>Art. 15 Disposizioni in tema di mandato di arresto europeo</p> <p>1. Le procedure di consegna relative a mandati di arresto europei emessi da procuratori europei delegati sono disciplinate dalla legge 22 aprile 2005, n. 69.</p> <p>2. Ai fini della procedura passiva di consegna, per "Stato membro di emission" si intende lo Stato membro dell'Unione europea in cui si trova il procuratore europeo delegato che ha emesso il mandato di arresto europeo.</p>	<p>Art. 15 Provisions on the European arrest warrant</p> <p>1. The surrender procedures relating to European arrest warrants issued by European delegated prosecutors are governed by law no. 69, 22 April 2005.</p> <p>2. For the purposes of the passive surrender procedure, "issuing Member State" means the Member State of the European Union in which the European Delegated Prosecutor who issued the European arrest warrant is located.</p>
<p>Art. 16 Contrasti di competenza</p> <p>1. Il procuratore generale presso la Corte di cassazione e' l'autorita' competente a decidere in caso di contrasto tra la Procura europea e una o piu' procure della Repubblica sulla competenza a procedere ai sensi dell'articolo 25, paragrafo 6, del regolamento.</p>	<p>Art. 16 Contrasts/Conflicts of jurisdiction</p> <p>1. The Attorney General at the Court of Cassation is the competent authority to decide in the event of a conflict between the European Public Prosecutor's Office and one or more national public prosecutor's offices on the competence to proceed pursuant to Article 25, paragraph 6, of regulation.</p>

<p>2. Ai contrasti di competenza di cui al comma 1 si applicano, in quanto compatibili, gli articoli 54, 54-bis, 54-ter e 54-quater del codice di procedura penale.</p>	<p>2. Articles 54, 54-bis, 54-ter and 54-quater of the Code of Criminal Procedure shall apply, insofar as they are compatible, to the conflict referred to in paragraph 1.</p>
<p>Art. 17 Dichiarazioni relative alle misure di indagine di cui all'articolo 30 del regolamento</p> <p>1. Ai fini di cui all'articolo 30, paragrafi 1 e 3, del regolamento, i procuratori europei delegati sono autorizzati a disporre o a chiedere le intercettazioni di conversazioni e le consegne controllate di merci nei limiti e alle condizioni previste dalle norme vigenti.</p> <p>2. Nei quindici giorni successivi alla data di entrata in vigore del presente decreto, il Governo, su proposta del Ministro della giustizia, notifica alla Procura europea l'elenco dei reati per i quali le norme vigenti consentono l'impiego, a fini di indagine penale, dell'intercettazione di conversazioni o comunicazioni e delle consegne controllate di merci.</p>	<p>Art. 17 Declarations relating to the investigation measures referred to in Article 30 of the Regulation</p> <p>1. For the purposes referred to in Article 30 (1) and (3) of the Regulation, the European Delegated Prosecutors are authorised to order or request the interception of conversations and the controlled deliveries of goods within the limits and under the conditions provided for by the regulations in force.</p> <p>2. In the fifteen days following the date of entry into force of this decree, the Government, on the proposal of the Minister of Justice, shall notify the European Public Prosecutor's office of the list of crimes for which the current regulations allow the use, for criminal investigation purposes, interception of conversations or communications and controlled deliveries of goods.</p>
<p>Art. 18 Autorita' giudiziarie competenti ai sensi degli articoli 25 e 34 del regolamento</p> <p>1. Nei casi previsti dagli articoli 25, paragrafo 4, e 34, paragrafi 5 e 6, del regolamento, autorita' competente e' il procuratore generale presso la Corte di cassazione.</p> <p>2. Il procuratore generale presso la corte di cassazione da' in ogni caso comunicazione al Ministro della giustizia delle determinazioni assunte.</p>	<p>Art. 18 Competent judicial authorities pursuant to articles 25 and 34 of the regulation</p> <p>1. In the cases provided for by articles 25, paragraph 4, and 34, paragraphs 5 and 6, of the regulation, the competent authority is the attorney general at the Court of Cassation.</p> <p>2. The Attorney General at the Court of Cassation shall in any case notify the Minister of Justice of the decisions made.</p>

<p>Art. 19 Assunzione di procedimenti della Procura europea</p> <p>1. Quando, in conseguenza delle determinazioni assunte dal procuratore generale presso la Corte di cassazione ai sensi dell'articolo 18, sono trasferiti nello Stato procedimenti relativi a indagini condotte da procuratori europei delegati di altri Stati membri, si applicano le disposizioni di cui all'articolo 746-ter, commi 3, 4, 5, 6 e 7, del codice di procedura penale.</p> <p>2. La disposizione del comma 1 si applica anche nei casi in cui i procedimenti di indagine sono trasferiti nello Stato in forza di provvedimenti assunti dalle camere permanenti della Procura europea ai sensi degli articoli 26, paragrafo 5, e 36, paragrafi 3 e 4.</p>	<p>Art. 19 Taking of proceedings of the European Public Prosecutor's Office</p> <p>1. When, as a result of the decisions made by the Attorney General at the Court of Cassation pursuant to Article 18, proceedings relating to investigations conducted by European delegated prosecutors from other Member States are transferred to the State, the provisions of article 746-ter, paragraphs 3, 4, 5, 6 and 7, of the Code of Criminal Procedure apply.</p> <p>2. The provision of paragraph 1 also applies in cases where the investigation procedures are transferred to the State by virtue of measures taken by the permanent chambers of the European Public Prosecutor's Office pursuant to articles 26, paragraph 5, and 36, paragraphs 3 and 4.</p>
<p>Art. 20 Disposizioni finanziarie</p> <p>1. Dall'attuazione del presente decreto, fatta eccezione per l'articolo 4, non devono derivare nuovi o maggiori oneri per la finanza pubblica. Le amministrazioni interessate provvedono ai relativi adempimenti nell'ambito delle risorse umane strumentali e finanziarie disponibili a legislazione vigente.</p> <p>2. Agli oneri derivanti dall'articolo 4, pari ad euro 533.848 annui a decorrere dall'anno 2021, si provvede mediante riduzione dell'autorizzazione di spesa di cui all'articolo 4, comma 10, della legge 4 ottobre 2019, n. 117.</p>	<p>Art. 20 Financial provisions</p> <p>1. The implementation of this decree, with the exception of article 4, must not result in new or greater burdens for public finance. The administrations concerned provide for the related obligations in the area of human instrumental and financial resources available under current legislation.</p> <p>2. To the charges deriving from art Article 4, equal to Euro 533,848 per year starting from the year 2021, is provided by means of a reduction of the expenditure authorisation referred to in Article 4, paragraph 10, of the Law of 4 October 2019, n. 117.</p>

Italy's **Legislative Decree No. 9/2021** aligns national law with Council Regulation (EU) **19** 2017/1939 on the EPPO. We presented it in full length in order to compare it to the systems in other EPPO zone countries (see → the other volumes of this volume series)

The Decree establishes that EDPs exercise the full functions of national public prosecutors for cases falling under EPPO competence (Art. 9 para 1), with nationwide jurisdiction irrespective of local assignment (Art. 9 para 2). They are excluded from the hierarchical management of Italian public prosecutors and from the supervisory powers of the General Prosecutor at the Court of Appeal (Art. 9 para 3), reporting instead solely to the supervising European Prosecutor and the Permanent Chamber under the EPPO Regulation and IRP.

- 20** The **High Council of the Judiciary** (CSM) designates both European Prosecutors and EDPs, ensures integration into host offices, and handles transfers, partial exemptions from national duties, and post-mandate reassignment (Arts. 5–7, 10). **Disciplinary proceedings** require the European Chief Prosecutor’s consent if related to EPPO duties (Art. 13). **Crime reports** within EPPO competence must be registered in a **special national register** and forwarded to the EDP (see above Art. 14).
- 21** For daily investigations, EDPs must respect the EPPO hierarchy and IRP obligations, including **maintaining the electronic case file** (Art. 43 para 3 IRP), providing non-digital evidence access (Art. 43 para 4), **updating progress reports** in the CMS (Art. 44), answering requests from the supervising EP or Permanent Chamber (Art. 45 para 3), executing and, if needed, contesting instructions (Arts. 46–47), handling reallocation and merging of cases (Arts. 49–51), coordinating **cross-border measures** (Art. 53, see below Art. 31, 32 EPPO Regulation), and requesting support for costly measures (Art. 54).
- 22** We saw that the Italian Decree creates according to Art. 5, 13 EPPO Regulation a **dual status** because EDPs operate fully as Italian prosecutors while functionally subordinated to EPPO structures, ensuring uniformity of EU-level investigations.

B. EPPO-Regulation



The main legal source for **EPPO-led operations in Italy** is the EPPO Regulation, which constantly refers to the national law. As these national laws are important for EDPs as seconded national experts and Chamber members as well as lawyers keeping an eye on fair procedures, it is worth to collect the **relevant laws** in a comprehensive manner. But the laws alone do not ensure the applicability of the PIF enforcement structures. The whole prosecution process involves many persons and staff of institutions operating in the **EU's justice sector**; even the **Italian courts** play a major role. We want to point out one important fact that we analysed during the time of the study: For a long time it was critiqued in a quite manner that Italian criminal investigations and trials took too long and were too extensive. A European Council report from 2011 already pointed at this fact:

“The most important problem relates to the **length of criminal proceedings in Italy**, highlighted by the Attorney General of the Supreme Court of Cassation and the First President of the Court of Cassation on 30/01/2009, as well as the Council of Europe (Interim Resolution CM/ResDH(2009)42), in combination with the Law of 5 December 2005, which in fact reduced the time bar for serious fraud to 5 rather than 10 years.”²⁵

Still in 2022 and 2023 this **debate about Italian trials** remained. So what does this mean for PIF offences and their investigation and enforcement of potential sanctions?

Even though the EPPO has acted to the present day quickly and initiated a lot of investigations in Italy since June 2021, the future is tasked with a lot of trials, which the two first **EPPO Annual Reports** (2022–2024), see below mn. 6) revealed, it is so to speak not completely in the hands of the EPPO what happens with its investigations once they enter the court. Not the EPPO is an obstacle to effective EU fraud prevention through sanctions for perpetrators, but the Italian, like other national justices might still hinder effective judgments from time to time because it was and partly still is, i.e., not efficiently financed or takes too long. Italian Justice must – as the first two EU-Rule of Law Reports revealed – engage more in this area. Even today, 10 years after the Assessment of the European Council, the matter of lengthy trials pose a real threat to an effective sanctioning of EU-*PIF-Acquis* offences and at the same time to the effective protection of suspects and accused persons (e.g. if they are acquitted after more than 10 years).²⁶

²⁵ See European Council 2011, p. 72.

²⁶ See Parodi and Jones 2022: “MILAN, July 13 (Reuters) - Roberto Bachis, a 58-year-old Italian accountant, was acquitted of two charges of fraud in 2019 after 11 years of trials and investigations which ruined his health, his finances and his marriage. A client arrested for fraudulent bankruptcy in 2008 pleaded guilty and bargained a lower sentence saying she had acted on his advice. Bachis was given three years in prison, only to be cleared on appeal in 2014. In the meantime, he had been put under investigation in 2013 for another fraud case involving a state contract for solar panels, for which he was finally acquitted three years ago.”

Taking this into consideration the **special introduction by the CNP-experts** below shall now enable every reader to **understand the Italian-EPPO system** better.

- 5 Article 76 of Law No 142 of 19 February 1992 established the (special Italian) **Anti-Fraud Committee**, the national body responsible for coordinating Italy's response to fraud and irregularities affecting the EU's financial interests. Its mandate, refined by Presidential Decree No 91 of 14 May 2007, extends to advisory and guidance functions ensuring the effective coordination of preventive, investigative, and corrective actions across fiscal, agricultural, and structural fund domains. The Committee also ensures compliance with Article 325 TFEU, focusing on the detection, recovery, and reporting of irregularities in cooperation with OLAF. Within this structure, the Guardia di Finanza's unit at the Department for the Coordination of Community Policies (Prime Minister's Office) collects and analyses quarterly reports on fraud affecting EU funds in line with Regulations (EC) 1681/94 and 1828/06 (see framework recitals).
- 6 The **Operational Trends and Statistical Overview** (see EPPO Annual Reports 2021–2024) show that since the EPPO's launch, Italy has been one of the most active jurisdictions. In 2021, the initial implementation year they had a strong focus on CAP and structural fund frauds. In 2022 the Report outlines a rapid growth in investigations and early court activity. In 2023 625 reports received; 671 active investigations; €7.38 billion total estimated damage; 13 convictions were outlined and the; main typologies were VAT revenue fraud, procurement and non-procurement expenditure fraud, corruption, and money laundering. In 2024 they received 698 reports (+12% YoY) and 764 active investigations; €7.05 billion estimated damage. In total 175 trials were ongoing; 22 convictions reached and the most dominant sectors were now the Recovery and Resilience (228 cases) and Agricultural Programmes (117 cases).²⁷
- 7 The **data of the EPPO's Annual Reports** show and confirm Italy's central role within EPPO operations, marked by systematic collaboration between the European Delegated Prosecutors and national financial police, particularly the *Guardia di Finanza*, which is very active on social media, too. Italy's steady increase in cases both in number and financial magnitude reflects the country's large share of EU funding and its advanced detection infrastructure, making it a critical jurisdiction and a "*Blaupause*" (as we say in Germany aka "a good example") in safeguarding the EU budget.

²⁷ See <https://www.eppo.europa.eu/en/about/members/italy>. Accessed 31 October 2025.

I. Specific Introduction to the Italian judicial system related to the European Public Prosecutor’s Office (EPPO) and of the protection of the EU’s financial interests by means of criminal law²⁸

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1. The Italian Adaptation to the EPPO Regulation: An Overview

Following the adoption of Regulation 2017/1939 on the establishment of the European Public Prosecutor’s Office (the “EPPO”), the Italian Parliament delegated the Government – by law n. 117/2019 – to issue the legislation necessary to adapt national law to the rules governing the new supranational investigating body. The Government issued Legislative Decree n. 9/2021, which deals with two different aspects of the internal justice system: organizational and procedural. 1

a) Organisation of the Judiciary

On the organizational side, the Italian legislator has been very meticulous in arranging the new supranational articulation of the judiciary, paying particular attention not to impinge on the autonomy and **independence of magistrates**. 2

First, the Italian legislator has provided for the competent authority and procedure for the designation of the **candidates for the post of European Prosecutor (EP)** (arts. 2 and 3). In line with Art. 105 of the Italian Constitution, it is up to the High Council of the Judiciary (the self-government body of the judiciary) to designate three candidates for the post of EP, to be communicated to the Ministry of Justice, who may formulate observations and suggest different designations. However, the final decision rests on the High Council of the Judiciary. Once nominated by the Council of the EU, the Italian EP is placed outside the organic role of the judiciary. 3

Second, the Italian legislator has provided for the competent authority and procedure for the **designation of European Delegated Prosecutors (EDPs)** (arts. 5, 6 and 7). Even in this case, it is up to the High Council of the Judiciary to designate the EDPs to be nominated by the College of the EPPO, in relations to the offices agreed on by the European Chief Prosecutor and the Italian Ministry of Justice. According to the initial 4

²⁸ Although this paper is the outcome of a joint work between the authors, par. 1 must be attributed to Rosanna Belfiore, while par. 2 must be attributed to Luca Pressacco.

agreement²⁹, 20 Italian EDPs should have been distributed in 9 territorial offices³⁰, dislocated across the country regardless the already existing 26 judicial districts. However, following a supplementary agreement between the European Chief Prosecutor and the Italian Ministry of Justice³¹, territorial offices have been reduced to 8³². This territorial distribution by grouping together different judicial districts, up to 6 (as in the case of the office in Rome), requires EDPs in each of the 8 offices to coordinate investigations in vast areas and to participate in hearings in many – sometimes even remote – seats. Indeed, **EDPs cannot delegate fellow magistrates for such participation** (EDP assistants are an option), as public prosecutors are normally allowed to do.

- 5 Third, the Italian legislator has shaped the **powers of EDPs** (Art. 9). Departing from the proper ‘double hat’ doctrine, yet envisaged in the EU Regulation, Italian EDPs shall exercise, exclusively and up to the definition of the proceedings in the interest of the EPPO, the functions and powers of national prosecutors across the whole country (independently of the office they have been assigned to and without affecting rules on the judge’s competence).
- 6 The exemption from ordinary work and specialisation in crimes affecting the financial interests of the EU has led to the creation of a special investigative track, comparable to the already existing special investigative track established for investigations on mafia-type crimes. If this exclusivity clause has meant to recognize the greatest relevance of the new supranational investigating body, it nonetheless may entail two risks: lack of coordination with national prosecutors dealing with either PIF crimes or organized crime falling outside the competence of the EPPO; and non-uniform action against PIF crimes at domestic level. In this respect, it is of utmost importance the signed **Protocol of Cooperation between the EPPO and the National Anti-mafia and Anti-terrorism Direction**³³, where contact points, coordination in linked investigations and exchange

²⁹ Italian Official Journal n. 7, 1 April 2021, p. 58.

³⁰ Three EDPs in Rome (incorporating the districts of Rome, Perugia, Cagliari and L’Aquila); three EDPs in Milan (incorporating the districts of Milan and Brescia); two EDPs in Naples (incorporating the districts of Naples and Salerno); two EDPs in Bologna (incorporating the districts of Bologna, Ancona and Florence); two EDPs in Palermo (incorporating the districts of Palermo, Catania, Caltanissetta and Messina); two EDPs in Venice (incorporating the districts of Venice, Trieste and Trento); two EDPs in Turin (incorporating the districts of Turin and Genoa); two EDPs in Bari (incorporating the districts of Bari, Lecce and Campobasso); two EDPs in Catanzaro (incorporating the districts of Catanzaro, Reggio Calabria and Potenza).

³¹ Italian Official Journal n. 68, 21 March 2023, p. 49.

³² The office in Catanzaro has been eliminated and the two EDPs initially there allocated have been repositioned in the office in Rome (incorporating also the districts of Catanzaro and Reggio Calabria).

³³ The protocol was signed on the 24th of May 2021 at the General Prosecutor’s Office of the Court of Cassation.

of information on strategic issues have been provided for. Such cooperation has already proved to be all the more necessary³⁴.

Fourth, in compliance with the EU Regulation where direction and supervision are carried out by the EPPO organs, the Italian legislator has **exempted EDPs from both the direction by Chief Public Prosecutors and the supervision by General Attorneys** at the Appeal Courts, as well as from coordination by the National Anti-mafia and Anti-terrorism General Prosecutor³⁵. Another reason why the above-mentioned Protocol between the EPPO and the National Anti-mafia and Anti-terrorism Direction is of great importance. 7

Last, the Italian legislator has provided for specific rules concerning **disciplinary proceedings** against EDPs so as to complement the internal legislation (Legislative Decree n. 109/2006) with provisions under the EPPO Regulation (Art. 13). 8

b) Criminal Procedure

As far as the procedural side of **Legislative Decree n. 9/2021** is concerned, the legislator has adopted a very soft approach: it has intervened only in so far as strictly necessary and when expressly required by the Regulation, though giving rise to uncertainties on crucial procedural steps. 9

The first issue that needed to be dealt with was to address the allocation of competences between national public prosecutors and EDPs (Art. 14). To this end, a double communication is provided for. Any **report, complaint and allegation** concerning crimes in relation to which the EPPO could exercise its competence shall be communicated by the judicial police to both national public prosecutors and EDPs. And the national public prosecutor is due to record the said crime reports in a special register specifically instituted by the Ministry of Justice, save when it appears necessary to carry out urgent investigative acts, or a delay may jeopardize investigations. If the EPPO does not exercise its competence, and in any case after 30 days since the record in the **special register**, 10

³⁴ In October 6 2023 the EPPO reported the following news: at the request of the European Public Prosecutor's Office in Palermo (Italy), the Anti-Mafia Investigation Directorate („*Direzione Investigativa Antimafia*”) has seized assets of a farmer suspected of agricultural funding fraud and ties to organised crime. The suspect, who owns a farmhouse and agricultural real estate in the province of Catania, has family ties to people convicted of mafia association. The investigation began after the Anti-Mafia Investigative Directorate carried out checks on a list of companies that were not allowed to receive public funds. According to the evidence, the suspect falsified statements and declared ownership and possession of land that she did not own, in the province of Enna, in order to illegally obtain €245 000 in agricultural funds from the European Union, between 2016 and 2021. During the execution of the freezing order, issued by the judge for preliminary investigations in Enna, gold watches and jewellery were seized, as well as bank accounts and a portion of the farm, to the amount of €245 000. See: <https://www.eppo.europa.eu/en/news/italy-eppo-seizes-assets-investigation-farmer-mafia-ties>. Accessed 30 June 2025.

³⁵ To this end, the following provisions shall not apply: Art. 70 Royal decree n. 12/1941; arts. 1, 2, 3 4.1 and 6 of legislative decree n. 106/2006; arts. 53, 371-bis, 372, 412, 413 and 421-bis.1-2 of the Code of Criminal Procedure.

the crime report shall be recorded in the usual register under Art. 335 of the Code of Criminal Procedure, and investigations by national authorities shall be initiated.

- 11 The second relevant issue that needed to be dealt with was to specify the national authority which is meant to decide on the **attribution of competences** in cases of conflicts (both positive and negative) between national public prosecutors and EDPs (arts. 16 and 18). In line with national provisions concerning contrasts between public prosecutors, the Italian legislator has decided to designate the General Attorney at the Court of Cassation (arts. 54, 54-bis, 54-ter and 54-quarter of the Code of Criminal Procedure shall apply).
- 12 Other procedural matters dealt with by Legislative Decree n. 9/2021 simply concern references to specific provisions under either special laws or the Code of Criminal Procedure: in case of EAWs issued by EDPs, Law n. 69/2005 implementing FD 2002/584/JHA shall apply (Art. 15); and in case of transfers of proceedings to Italian national authorities after investigations have been carried out by EDPs of other Member States, provisions on transfers of criminal proceedings under Art. 746-ter, par. 3, 4, 5, 6 and 7 of the Code of Criminal Procedure shall apply (Art. 19).
- 13 **Redundant** is the provision under Legislative Decree n. 9/2021 which specifies that EDPs are allowed to order or request interception of communications and controlled deliveries of goods subject to limitations and conditions provided for by the law (Art. 17). Art. 30 of the EPPO Regulation is already clear in this regard.
- 14 Unfortunately, Legislative Decree n. 9/2021 has failed to properly integrate the dismissal-of-the-case procedure under the Code of Criminal Procedure with that under the EPPO Regulation.
- 15 In Italy, dismissal of the case is requested by the public prosecutor to the competent judge for preliminary investigations (a judge that does not carry out own investigations but rather exercises supervision and control functions in the pre-trial stage) (Art. 408 of the Code of Criminal Procedure). **Dismissal** is always finally ordered by the said judge in case he/she agrees with the request put forward by the public prosecutor. In case of disagreement or upon specific opposition by the victim of the crime, and only after a confrontation with the involved parties in an *ad hoc* hearing, the judge for preliminary investigations may order the public prosecutor to either prosecute or carry out further investigations (Art. 409 of the Code of Criminal Procedure). Such judicial control over dismissal is due to ensure that public prosecutors do not fail to fulfil the constitutional principle of mandatory prosecution (Art. 112 of the Italian Constitution).
- 16 On the other hand, under the EPPO Regulation it is for the Permanent Chamber to decide to dismiss the case, based on a report provided by the competent EDP (Art. 39). There is no request to national judges. EPPO as such is entitled to dismiss a case without the

need of judicial control. After all, **mandatory prosecution** which requires due judicial control is not expressly provided for under the Regulation, where the principles of legality (recitals 66 and 81) and *favour actionis* (Art. 36.1) apply instead.

In the absence of an explicit adaptation provision under Legislative Decree n. 9/2021, **17** the question is whether Italian cases falling within the competence of EPPO can be **dismissed by decision of the Permanent Chamber** as provided for in the EU Regulation (without consideration for judicial control and the victim rights), or a request of dismissal of the case to the judge for preliminary investigations is needed (together with the right of the victim to oppose it), as provided for in the Code of Criminal Procedure, in line with the principle of mandatory prosecution of national relevance. So far, praxis has shown that this last option prevailed³⁶. However, problems may arise if the judge for preliminary investigations does not *de plano* accept the EDP's request but rather order further investigations or even to prosecute. Even if such orders are in line with the *favour actionis* principle that underpins the supranational Regulation, it may be questioned whether the EPPO can receive orders concerning investigations and prosecution issued by a national authority.

Similar concerns apply as for the decision to reopen investigations on the basis of new **18** facts. While the EU Regulation designates the Permanent Chamber as the competent authority to do so (Art. 39.2)³⁷, the Code of Criminal Procedure indicates the judge for preliminary investigations as the competent authority to reopen a closed case upon a request of the public prosecutor based on the need of further investigations (Art. 414 of the Code of Criminal Procedure). Yet again, it is not clear whether judicial control provided for at national level aimed to guarantee mandatory prosecution shall prevail over the procedure provided for at supranational level.

An argument in favour of **judicial control** in Italy by the judge for preliminary investigations over both the dismissal of the case and the reopening of investigations may lie **19** in **Art. 42.1 of the Regulation**, according to which “Procedural acts of the EPPO that are intended to **produce legal effects vis-à-vis third parties** shall be subject to review by the competent national courts in accordance with the requirements and procedures

³⁶ Though, in Italy dismissed cases are a few, as reported in the 2021 Annual Report, p. 36 (out of 120 active investigations, 1 case was dismissed), and in the 2022 Annual Report, p. 36 (out of 265 opened investigations, 20 cases were dismissed).

³⁷ However, see Art. 59.5 of the EPPO Internal Rules of Procedure: “If the Permanent Chamber [...] or a *national court* or the European Court of Justice following the review of a dismissal decision decide that the EPPO should reopen the case, the supervising European Prosecutor shall assign a European Delegated Prosecutor to continue the investigation.” (emphasis added).

laid down by national law. The same shall apply to failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this Regulation.”³⁸.

- 20** One last consideration is due as far as evidence is concerned. Legislative Decree n. 9/2021 does not engage this topic and therefore leaves it to Art. 37 of the EPPO Regulation, yet laconic. According to this last provision, the power of the **trial court** to freely assess the evidence presented by the defendant or the prosecutors of the EPPO shall not be affected by the Regulation: therefore, assessment criteria under Art. 192 of the Italian Code of Criminal Procedure fully apply. However, according to the same regulatory provision, evidence presented by the prosecutors of the EPPO or the defendant to a court shall not be denied admission on the mere ground that it was gathered in another Member State or in accordance with the law of another Member State: this means that it will be for the trial court to assess case by case whether that evidence is admissible under the *lex fori*. Since Italian criminal proceedings are based on a clear-cut separation between the pre-trial and the trial stage, together with the **principle of cross-examination** (Art. 111 of the Italian Constitution), EPPO investigation acts as such will not be admissible in the trial, unless unrepeatably before the trial court, to the same extent as national prosecutors’ investigation acts.

2. Investigations on PIF offences in Italy: combining the complexity

- 21** The establishment of the EPPO poses major challenges on several levels: cultural, organizational, legal. This obviously also applies to Italy, a country in which, despite the adversarial turn impressed by the approval of the “new” Code of Criminal Procedure in 1988, many elements typical of the civil law tradition are still present and clearly identifiable (such as, for example, a rather strict conception of the legality principle, from which the mandatory nature of prosecution, enshrined in the Italian Constitution, derives)³⁹.
- 22** As is well known, investigations, prosecutions and trials into the offences affecting the EU financial interests are carried out, in all countries participating in the enhanced cooperation on the establishment of the EPPO, according to a **patchwork of legal texts**. Therefore, to fully understand the impact of EPPO on the Italian legal order, it is necessary to **examine the specific configuration** of this “puzzle” in the system at stake.
- 23** Starting from the side of **substantive criminal law**, Art. 22.1 of the EPPO Regulation states as follows: “the EPPO shall be competent in respect of the offences provided for

³⁸ After all, judicial control does not always require an individual challenge but can also be exercised *ex officio*. See Böse 2019, pp. 192 et seq.

³⁹ For further information and references on the evolution of the Italian Criminal Justice System see, among the recent contributions, Lupária 2017, pp. 1 et seq. and 17 et seq. respectively; Illuminati 2010, p. 297; Marafioti 2008, pp. 81 et seq.; Panzavolta 2005, p. 577; Illuminati 2005, p. 567; Amodio 2004, p. 489.

in the PIF **Directive (EU) 2017/1371**, as implemented by national law”. Consequently, offences under the Italian Criminal Code or other special laws relevant for the field examined – such as, for instance, tax, custom or smuggling legislation⁴⁰ – come into play.

It is worth remembering that, even before the PIF Directive was enacted in 2017, Italian criminal legislation was to a certain extent already in compliance with the obligations established at supranational level to counter fraud against the EU budget. For this reason, in recent years the legislator intervened specifically on those provisions that needed some adaptation or amendment. This was done, first, by **Legislative Decree n. 75/2020** and, most recently, by **Legislative Decree n. 156/2022**. Indeed, the PIF directive contains autonomous definitions of the offences it covers, that may correspond to different crimes at domestic level⁴¹. Just to give an example, the offence of fraud, described in Art. 3 of the PIF Directive, could include – at domestic level – the offences provided for under both Art. 640-*bis* (Aggravated fraud for obtaining public funds) and Art. 316-*bis* of the Italian Criminal Code (Misapplication of public funds). 24

On the **procedural side**, in addition to the EPPO Regulation, it must be taken into account the national adapting legislation – already examined in the previous paragraph – and, of course, the Italian rules on criminal procedure, applicable within the limits provided for by Art. 5.3 of the EPPO Regulation. 25

Criminal proceedings obviously begin when an offence is reported. Information could arise from **different sources** but, in the field of financial crimes, it usually comes from an administrative authority or from the police. As already pointed out, in the event the crime report concerns an offence that could fall within the jurisdiction of the EPPO, the concerned authority must proceed with a double communication: both to the Italian Prosecutor of the Republic and to the **Italian EDP which is territorially competent**. If the latter decides to exercise his/her competence, national authorities must refrain from investigating on the same criminal conduct (Art. 25.1 of the EPPO Regulation) and the EDP shall take control of the investigations. 26

Since the EDPs “shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment” (Art. 13.1 of the EPPO Regulation), it seems convenient to focus briefly on the main features of the public prosecutor in the Italian legal order. 27

First of all, according to Art. 107.4 of the Italian Constitution, the public prosecutor is a member of the judiciary, with a similar status – although not exactly coincident – to that of judges. This is the reason why EDPs cannot be appointed without the involvement of 28

⁴⁰ Particularly relevant for the field under consideration are Legislative Decree n. 231/2001, regulating the administrative corporate responsibility for offences perpetrated in the interest or to the advantage of a legal person, Legislative Decree n. 74/2000, establishing the criminal tax system and Presidential Decree n. 43/1973, the so-called “customs law”.

⁴¹ See Militello 2022, pp. 7 et seq.; Pelissero 2019, p. 1118; Manacorda 2017, pp. 660 et seq.

the High Council of the Judiciary, which safeguards the autonomy and independence of the judicial order as a whole.

- 29 Secondly, again according to the Italian Constitution (Art. 109), “the judicial police is at the service of the Judiciary”, in order to guarantee effective independence and operational autonomy, especially from interference by the executive power. This constitutional provision has been implemented through the establishment of special judicial police departments at each office of the Public Prosecutor (arts. 56, 58 and 59 of the Italian Code of Criminal Procedure). This form of **functional dependence** encourages the development of a stable professional connection between the police forces and the public prosecutor service, and the growth of highly specialised judicial police units. This seems particularly relevant for understanding the functioning of criminal justice system in general and, even more so, regarding the specific sector of crimes affecting the EU financial interests. As a matter of fact, in this field a specialised police force – “*Guardia di Finanza*” – operates with general economic and financial crime-fighting competences.
- 30 As far as the operational profiles are concerned, the one responsible for directing investigations is the public prosecutor, who avails him/herself with the assistance of the judicial police. The aim of the **preliminary investigations** is to collect all the information that is necessary for the decision on the criminal prosecution (Art. 326 of the Code of Criminal Procedure). In doing so, the public prosecutor shall conduct the investigations impartially, also verifying facts and circumstances in favour of the suspected person (Art. 358 of the Code of criminal procedure). This does not preclude the defence lawyer from carrying out his/her own investigations in the client’s interest (Art. 327-*bis* and Art. 391-*bis* ff. of the Code of Criminal Procedure).
- 31 During preliminary investigations, the public prosecutor enjoys broad investigative powers, including coercive ones, being able to delegate judicial police to perform specific activities. In particular, he/she can question the suspect, gather information from potential witnesses, proceed to technical assessments (eventually appointing experts) or identify persons and objects relevant for the charges. Moreover, since the public prosecutor belongs to the judiciary, the Code of Criminal Procedure allows him/her to independently order personal or home searches and the seizure of every item necessary for investigating the crime. Judicial control of these measures is only envisaged *ex post*, at the request of the interested parties.
- 32 The **judge for preliminary investigations** is another important actor during the pre-trial stage. This institution is called upon to ensure respect for the fundamental rights guaranteed by the Constitution, when needed. Indeed, the public prosecutor shall ask for this judge’s authorisation to proceed with interceptions of communications or to limit the personal freedom of the suspect through precautionary measures. Consequently, when national law requires authorisation to carry out a certain investigative measure or

to issue a precautionary measure, the Italian EDP too will have to ask for such authorisation (Art. 30.3 of the EPPO Regulation).

The judge for preliminary investigations is also called upon to monitor compliance with the principle of mandatory prosecution by checking if investigations are complete and if prosecution requests to dismiss the case are justified according to the law (Art. 408 ff. of the Code of Criminal Procedure). This control task, however, as mentioned above (see par. 1.2), could be somewhat problematic when it is exercised towards an EDP, who in principle shall be subject to instructions of the competent European Prosecutor and Permanent Chamber only. **33**

On the other hand, when the Italian EDP handling the case decides to bring it to judgment, there are two possible developments, depending on the offence charged. In case of crimes punishable by imprisonment not exceeding a maximum term of four years, or those listed under Art. 550 of the Code of Criminal Procedure, the EDP shall proceed by means of direct summons for trial. In all the other cases, the EDP shall proceed with a request for committal to trial, opening the stage of preliminary hearing (Art. 416 et seq. of the Code of Criminal Procedure). Unless the Italian EDP decides to propose to the competent Permanent Chamber to apply a simplified prosecution procedure on the basis of terms agreed with the suspect (according to Art. 40 of the EPPO Regulation): this is the case of the application of punishment upon request of the parties, a sort of plea bargaining (Art. 444 et seq. of the Code of Criminal Procedure), where the defendant takes advantage of a reduced sentence, waiving the right to trial. **34**

In any case, the decision to prosecute marks the transition from the pre-trial to the proper trial stage, where the rules under the Italian Code of Criminal Procedure apply, in line with the poor indications on the trial provided for by the EPPO Regulation, concerning solely admission and assessment of evidence presented by the parties (see again par. 1.2). **35**

II. Criminal investigations according to the EPPO Regulation based on national law (measures)



Hauck/Schneider/Karakocaoğlu/Laird

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- 1 Despite all the strong frameworks outlined in the special introduction, the investigative scenery and the staffing is the main area. Currently there are eight **regional offices** of EDPs investigating fraud detrimental to the Union in Italy.⁴² The EPPO was received quite well in Italy, even if the EPPO Adoption law could only come into effect three months prior to the operational start of the Office, which wanted to start earlier, but was hindered by other Member States and their nomination process of EDPs as well as the global pandemic. *Ceccarelli* explains the most relevant function of the EPPO accurately: “The absolute specificity of the European Public Prosecutor’s Office lies in the fact that a legal framework is created, which is a real, autonomous, absolute, i.e. completely independent framework, which is separate from the national judicial system.”⁴³
- 2 That citation proves to be true for the **procedural side of investigations** by the EPPO, if one fully agrees because independence, in contrast to the dependence on investigations in national systems (rights of intervention of the public prosecutor’s office or control by the Minister of Justice), is real progress – especially for the fight against corruption. Nonetheless, the investigations and the relationship to national law exercised by the independent authority are obvious and must therefore be known to EDPs and any other authority working together. After all, the written law is the most important tool in the fight against fraud, alongside relevant case law.
- 3 The **Italian Law on Criminal Procedure** is anchored in the *Codice di Procedura Penale*, which is the level playing field for prosecutors and investigators on Italian territory. The normal criminal offences can be found in the *Codice Penale* and the tax and customs offences are regulated in various Legislative Decrees (see below Part on OLAF and see the overviews).
- 4 Italy is a big country with long coasts and **many ports** in the Mediterranean. These are potential gateways for counterfeiting of goods or customs offences, such as tax evasion, involving legitimate duties that are part of the EU’s revenue.
- 5 Italy is therefore believed to be more affected by **customs offences** than landlocked countries, similar to Spain, Portugal, Bulgaria, Romania, Greece, Cyprus and France (Atlantic and Mediterranean and Channel Seas). The south of Italy seems to be more

⁴² See <https://www.eppo.europa.eu/en/italy>. Accessed 30 June 2025.

⁴³ *Ceccarelli* 2021, pp. 84 et seq: „un ordinamento giudiziario vero e proprio, autonomo, assolutamente indipendente e separato rispetto.”; in the same direction *De Matteis* 2021, pp. 111–116.

prone to fraud than other regions: “showing a distribution throughout the national territory with a particular concentration in the southern area (50% of the proceedings are registered in Enna, Patti, Catania and Lecce)”⁴⁴.

However, it always depends on which transport route one looks at. This may be the case for ship imports. The situation is different for air freight. Here, for example, Frankfurt am Main airport, in whose catchment area the Frankfurt public prosecutor’s office operates, is affected. The **shipping ports** in Italy are as follows: **6**

- Cagliari
- Catania
- Genoa
- Livorno
- Naples
- Olbia
- Palermo
- Bari

The main airports are as follows: Bari (BRI) Bergamo (BGY), Bologna, Brindisi (BDS), Cagliari (CAG), Catania (CTA), Florence (FLR), Genoa (GOA).⁴⁵ **7**

In the respective catchment areas, a crime peak can be assumed in relation to customs fraud damaging EU interests. Interestingly, the regional offices of the EPPO in Italy are also partly oriented towards these areas.⁴⁶ This does not mean, however, that other offences in the PIF area are less frequent in Italy. Other regions, especially the **agricultural zones**, can also be affected, as this is where many **subsidies** and development funds flow (region around Milan and in the north). The regions that are prone to fraud in Italy will most likely be regions where EDPs evocate or start investigations themselves – especially if these investigations prove to involve other countries e.g. in a cross-border VAT case (see → German Volume, Part I). Another important aspect that should be taken into account if EDPs or assistants to EDPs and judges as well as defence lawyers interpret provision or changes of provision, which were made to transpose the PIF Directive, that the whole implementation has been analysed and criticized from the academic point-of-view. **8**

Bartolucci for example has pointed out a major issue with the 2017/1371 **Directive’s implementation** in Italy. This is the gap between the Directive’s intent and its practical **9**

⁴⁴ Guagliard 2021, pp. 2, 24 et seq. citing the Technical Report to the Legislative Decree Scheme (Government Act n.204), p. 27.

⁴⁵ <https://www.worlddata.info/europe/italy/airports.php> depending on airlines/destinations.

⁴⁶ But see below the argument of Belfiore 2022, p. 53, who interprets the internal rules in Italy as super district zones, which is interesting. Compared to Germany, which has set-up five regional centers the decision is comparable. The situation is different in France, where Paris deals with everything, what seems to be typical for a centralized state compared to a decentralized state with different regions like Italy or Germany.

execution. *Belfiore* and *Pressacco* had already pointed out above within their introduction to this volume that even while “the [the PIF area in Italy] was to a certain extent already in compliance [with the Directive]”, enforcement in this area is “particularly relevant for understanding the functioning of criminal justice system” but often not established enough. *Bartulocci* said, while the Directive aimed to be a catalyst for stronger criminalization of fraud and corruption, the actual legal and procedural frameworks in Italy have struggled to fully integrate and apply these standards, which was reflected by a broader issue of reconciling EU-level directives with national legal systems.⁴⁷ The Directive introduced concepts like **double punishment** (for both bribers and those bribed), which were new to many legal systems, including Italy. It also expanded criminal liability for corporate offenses and emphasized the **importance of intent in fraud-related crimes**.

- 10 These innovations posed difficulties within the pre-existing Italian legal categories. He points out that in order to comply with the Directive, Italy made several **legislative changes**, particularly to Legislative Decree No. 231 (criminal liability of legal entities) and Legislative Decree No. 74 (tax regulation).⁴⁸
- 11 These amendments **broadened the scope of offenses** and increased penalties for fraud involving public procurement and misuse of EU funds. He has the opinion that the EPPO’s jurisdiction and resources were not expanded to the extent necessary to significantly improve the prosecution of cross-border crimes.⁴⁹ He sees that the EPPO’s supervisory and investigative role has not dramatically changed the effectiveness of prosecuting fraud and the tools and investigative capacities it provides are not significantly different from those available at the national level.
- 12 Last but not least he addresses the well-known problem that its implementation in Italy highlights both **the challenges of aligning national legal systems with EU directives** and the **limits** of supranational oversight without stronger enforcement mechanisms.⁵⁰

⁴⁷ Bartulocci 2024, pp. 86–87, 88 et seq.

⁴⁸ Ibid, pp. 80–83, 89–90.

⁴⁹ Ibid, pp. 91–92.

⁵⁰ Ibid, pp. 86, 93.

SECTION 1

Rules on investigations

1. Article 26 Initiation of investigations

<p>a) Initiation of Investigations by virtue of Art. 26 para 1 EPPO Regulation 94</p> <p>b) How to assess and verify relevant information by virtue of Art. 24 para 6, Art. 40 para 3 IRP 2020.003 95</p> <p style="padding-left: 20px;">aa. Relevant sources of the indications for a criminal offense falling within the competence of the EPPO 95</p> <p style="padding-left: 20px;">bb. Determination of the competence and verification of Crime Reports 102</p> <p style="padding-left: 40px;">(1) The Union standards, Art. 24 para 6 et seq. EPPO Regulation 102</p> <p style="padding-left: 40px;">(2) Competence of the EPPO, Art. 26 para 4 104</p> <p style="padding-left: 40px;">(3) Jurisdiction of the EDPs in Italy 105</p> <p style="padding-left: 40px;">(4) Internal Agreement on Jurisdiction of the regional office of the EPPO in Italy as stipulated by the EPPO Adoption Act 105</p> <p style="padding-left: 20px;">cc. How to assess and verify the suspicion level according to Art. 26 para 1 105</p> <p style="padding-left: 40px;">(1) The PIF offences in Italian criminal law and</p>	<p>the role of the Highest Criminal Court and the General Prosecution Office at the Italian Supreme Court..... 106</p> <p>(2) Methods of investigation, Collecting information and documenting the initiation of an investigation for an indictment (Art. 34 et seq. EPPO Regulation, Art. 40 para 3 IRP) 112</p> <p style="padding-left: 20px;">(a) Peculiarities differentiated by PIF offences (Typologies of EU frauds)..... 112</p> <p style="padding-left: 20px;">(b) Fraud 112</p> <p style="padding-left: 40px;">(aa) Revenue frauds 112</p> <p style="padding-left: 40px;">(bb) Expenditure frauds..... 114</p> <p style="padding-left: 20px;">(c) Corruption offences 115</p> <p style="padding-left: 20px;">(d) Money laundering with PIF crimes 115</p> <p style="padding-left: 20px;">(e) Embezzlement.... 116</p> <p style="padding-left: 20px;">(f) Criminal organisation (PIF “Mafia clause”) 116</p> <p style="padding-left: 20px;">(3) Special national databases for PIF offences / Digital investigations, Art. 40 para 3 IRP 2020.003 116</p>
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(4) Specific legislation & Judgments for sufficient factual indications for the PIF offences in Italian criminal (procedure) law – overview	116	(aa) In national case-law and reports by OLAF & EPPO	116
(a) Fraud-related peculiarities.....	116	(bb) In the case law of ECtHR and ECJ	119
(b) Examples and precedents.....	116	c) Actions if “Decision to open a case” (Regulation + Rules in IRP, 2020.003 EPPO).....	119
		d) Justiciability and appeals (Defence perspective).....	123

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.

First it is worth to take a closer look at the most important provisions for Art. 26 EPPO Regulation – especially the area of material competence (Art. 22 EPPO Reg. /PIF Directive⁵¹):

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

Overview	
Relevant national law	Sources: <i>Codice penale</i> /Penal Code, <i>Codice di procedura penale</i> /Criminal Procedure Code, <i>Disciplina della responsabilità amministrativa delle persone giuridiche</i> / Discipline of the administrative liability of legal persons – Legislative Decree 8 June 2001, n. 231, <i>Legge sui reati tributari</i> / Law on tax offenses
“an offence within the competence of the EPPO”	For the text of the offences that are mentioned by Art. 26 EPPO Regulation “an offence within...”/ <i>interessi finanziari dell’Unione</i> . Cf. Hauck 2021, pp. 543 on general principles; Hauck 2026a, The PIF Directive, Art. 3, 4, 5, 6, 7, 8, 9 PIF Directive and see EPPO Adoption Act (below III: Sources of Law), see Italy’s Notification to the EPPO, Art. 117 EPPO Regulation and see one column above. “Article 117 second part – extensive list of the national substantive criminal law provisions that apply to the offences defined in Directive (EU) 2017/1371 and any other relevant national law;”).

⁵¹ See in-depth and precisely Salazar 2021, pp. 89 et seq.

1. Any offence, committed or attempted, resulting in the misappropriation or diversion of funds or property from the budget of the Union or budgets managed by it, or on its behalf:

[all Codice penale:] *articles 316-bis [relativa a fondi di origine europea], 316-ter [relativa a fondi di origine europea]⁵², 356, 640, par. 2 n. 1)[relativa a fondi di origine europea], 640-bis [relativa a fondi di origine europea], 640-ter, 2nd paragraph; article 2 of Law no. 898 of 23 December 1986; articles 282 et seq. of the decree no. 43 of the President of the Republic of 23 January 1973, n. 43.*

[Nota bene: The Presidential Decree n°43 from 1973 is quite important for investigations by the Guardia di Finanza: Art. 283, 284, 285, 286, 287, 288 (Contrabbando nei depositi doganali), 289, 290, 291, 292, 291-bis, 291-quarter (Contrabbando dei tabacchi lavorati esteri), 294].

2. Any offence, committed or attempted, affecting VAT revenue and resulting in a reduction in the resources of the Union budget or budgets managed by it or on its behalf, provided that the act or omission is committed in cross border fraudulent schemes (hence, also in part on the territory of another Member State of the European Union) and the overall damage caused to the financial interests of the Member States concerned and the Union, excluding interests and penalties, amounting to at least ten million euros:

articles 2, 3, 4, 5, 8, 10, 10-quarter, 11 of Legislative Decree no. 74, 10 of March 2000.

[Evasione dell'IVA all'importazione, Art. 70 del D.P.R. n.633/1972 – Applicazione dell'imposta]

3. any offence, committed or attempted, by a public official or a person entrusted with a public service who, directly or indirectly, requests or receives advantages of any kind, or accepts the promise thereof, with a view to performing or refraining from performing an official act or service which

⁵² See already Nicolicchia 2017, p. 7 (8).

has the effect of prejudicing or endangering the European Union's financial interests:

articles 317, 318, 319, 319-ter, 319-quater, 320, 322, 322bis of the criminal code [so-called corruption offences].

4. any offence, committed or attempted, by a person promising, offering or procuring for a public official or a person in charge of a public service, any advantage whatsoever to perform or refrain from performing the acts mentioned in the previous paragraph:

articles 319-quater, par. 2, 321, 322 and 322-bis of the criminal code.

5. any offence, committed or attempted, by a public official or a person entrusted with a public service who, directly or indirectly tasked with the management of funds or assets, appropriates them or allocates them for purposes other than those intended, where this causes damage to the Union's financial interests:

articles 314, 316, 323 of the criminal code.

6. [= Art. 4 PIF Directive] **articles 379, 512-bis, 648, 648-bis, 648-ter and 648-ter. 1 of the criminal code [+ Article 357 of the Criminal Code (Concept of public official) Art. 358 c.p. (Notion of the person in charge of a public service)]** in cases where the conduct referred therein is detrimental to the financial interests of the European Union or is related to money and properties that are the proceeds of the offences referred to above.

7. association offences aimed at the commission of offences ["mafia-clause"] mentioned in the previous paragraphs."⁵³

[Art. 5 PIF Directive: Art. 115 c.p., 414 c.p., 110 c.p. [special cases see Art. 9 d.lgs. n. 74 del 2000, Art. 379 c.p.

Attempt (*delitto tentato*): Art. 56⁵⁴, Art: 6 d.lgs. n. 74 del 2000]

[Art. 8 PIF Directive aggravating circumstances, see Art. 61-bis c.p., Art. 416-bis-1 c.p.]

⁵³ See <https://www.eppo.europa.eu/sites/default/files/2021-11/16-IT.pdf>. Accessed 30 June 2025.

⁵⁴ Wörner 2009, pp. 135 et seq.

Sanctions for legal persons	The Italian Legislator stated in 2018–2020: “Therefore, harmonization is not required, with the following exceptions: the figure of “Embezzlement by profiting from the error of others” under Article 316 of the criminal code; the figure of “Undue receipt of funds to the detriment of the State” under Article 316-ter of the criminal code; the second paragraph of Article 319-quater “Undue induction to give or promise benefits; Article 2 of Law No. 898 of 1986 concerning fraud in the disbursement of contributions for agriculture. It was therefore intervened to raise the penalty for natural persons in order to comply with the minimum limit of 4-year’s imprisonment for the punishment of offences detrimental to the financial interests of the Union where the conduct causes considerable damage or advantage.” ⁵⁵
“[competence of] a European Delegated Prosecutor in Italy”	See EPPO Adoption Act (below III. Sources of Law).
“jurisdiction”	Cf. ss. 6 et seq. from the Italian Criminal Code and Art. 11 of the PIF Directive (Hauck 2026a, Art. 11) → ss. 6, 10 (territory, place of commission principle), 7.

Source: The authors.

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

- 3 Art. 26 needs to be seen independent from Art. 27. Art. 26 stands on its own and describes a **principle of legality at Union level**, which has the effect of protecting the Unions’ (own) financial interests.
- 4 But what is the effect of the reference to national law? How have the cases been exercised in practice and what is the situation after one year of operational work? The EPPO Annual Report 2021 provides information on the exercise of jurisdiction under Articles

⁵⁵ “Quindi non è richiesta armonizzazione, con le eccezioni che seguono: la figura di ‘Peculato mediante profitto dell’errore altrui’ ex Art. 316 c.p.; la figura di ‘Indebita percezione di erogazioni a danno dello Stato’ f. Art. 316-ter c.p.; Il comma secondo dell’articolo 319 quater ‘Induzione Indebita a dare o promettere utilità’; articolo 2 della legge n. 898 del 1986 In materia di frodi nell’erogazioni di contributi per l’agricoltura. Si è dunque intervenuti per innalzare la sanzione penale prevista per le persone fisiche al fine di rispettare il limite minimo di 4 anni di reclusione per la punizione dei reati lesivi degli interessi finanziari dell’Unione ove le condotte arrechino danni o vantaggi considerevoli.”

26 and 27 EPPO Reg. in Italy. From 262 criminal complaints 119 lead to the exercise of the EPPO's competence.⁵⁶

In the following the Italian system of acting by virtue of Art. 26 EPPO Regulation shall be explored and it shall be tried to give answer to the question on how the work of the Italian delegated prosecutors can be simplified, outlined and presented in order to strengthen the exercise of jurisdiction via Art. 26 EPPO Regulation in the future and not to let it come upon evocation cases. 5

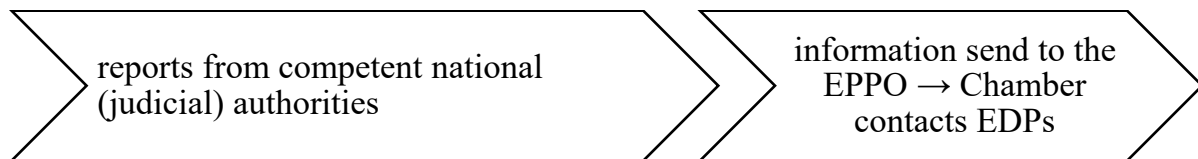
b) How to assess and verify relevant information by virtue of Art. 24 para 6, Art. 40 para 3 IRP 2020.003

Either PIF offences are reported by private individuals or companies (legal persons) or by Union authorities. The case management system (Art. 41 EPPO Regulation) and the use of the information possibilities for PIF offences are decisive in this stadium. 6

aa. Relevant sources of the indications for a criminal offense falling within the competence of the EPPO

A distinction can be made between the direct and the indirect path for the transfer of information related to the competence: 7

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

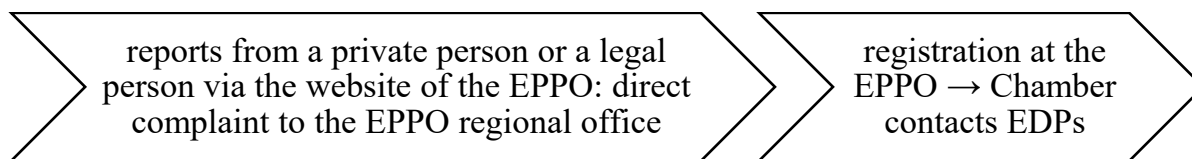


Art. 24 para 1: see Art. 57 of the Italian Criminal Procedure Code.⁵⁷

⁵⁶ Italian regional offices ie the EDPs (there are 15, status: 2022 and 40 National European Delegated Prosecutors' Assistants) opened 66 new cases [by virtue of Art. 26] in 2021, see https://www.eppo.europa.eu/sites/default/files/2022-03/CH2.12_EPPO-Annual-Report-2021-IT.pdf. Accessed 30 June 2025.

⁵⁷ State Police (Polizia di Stato), Carabinieri's (Arma dei Carabinieri), Financial Police (Guardia di Finanza) and Prison Police (Polizia Penitenziaria). In addition, authorities to which other Italian laws confer special judicial police functions, including, for example, the Customs Agency (Agenzia delle Dogane). And see the Italian Notification to the EPPO, which stipulates the same authorities: "In accordance with Art. 24 (1) of Regulation (EU) 2017/1939 the national authorities that are obliged to report to the EPPO any criminal conduct in respect of which the EPPO could exercise its competence are all authorities with general judicial police functions according to Art. 57 of the Italian criminal procedure code, that is, mainly, State Police (Polizia di Stato), Carabinieri's (Arma dei Carabinieri), Financial Police (Guardia di Finanza) and Prison Police (Polizia Penitenziaria). In addition, authorities to which other Italian laws confer special judicial police functions, including, for example, the Revenue Agency (Agenzia delle Entrate) and the Customs Agency (Agenzia delle Dogane)."

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



- 8 **Another, third source of information** are the Union bodies, which are obliged to report either to OLAF or to the EPPO (e.g. by obliged by Working Agreements) – depending on the seriousness of the suspected conduct: irregularities only or clear foundations for potential criminal offences. National authorities, who report to OLAF need to obey the Italian “Guidelines on how to report irregularities and fraud to the European Commission” (*Linee guida sulle modalità di comunicazione alla Commissione europea di irregolarità e frodi*).
- 9 OLAF will either way report conduct that falls in the EPPO’s competence by virtue of Art. 12c OLAF Reg. Relevant national law in this regard can be found in the CPC:

Second Part

Book V Book V Preliminary Investigations And Preliminary Hearing

Title I General Provisions

Art. 326 CPC⁵⁸ Purpose of preliminary investigations

1. The public prosecutor and the judicial police shall carry out within the scope of their respective powers, the investigations necessary for the determinations inherent in the exercise of criminal prosecution.

Art. 327 CPC⁵⁹ Direction of preliminary investigations

1. The public prosecutor directs the investigation and disposes directly the judicial police who, even after the communication of the crime, continues to carry out activities on its own initiative according to the modalities indicated in the following articles.

⁵⁸ **Parte Seconda**

Libro V Indagini Preliminari E Udienza Preliminare

Titolo I Disposizioni Generali

Art. 326. Codice di Procedura Penale Finalità delle indagini preliminari

1. Il pubblico ministero e la polizia giudiziaria svolgono, nell’ambito delle rispettive attribuzioni, le indagini necessarie per le determinazioni inerenti all’esercizio dell’azione penale.

⁵⁹ **Art. 327. Codice di Procedura Penale** Direzione delle indagini preliminari

1. Il pubblico ministero dirige le indagini e dispone direttamente della polizia giudiziaria (che, anche dopo la comunicazione della notizia di reato, continua a svolgere attività di propria iniziativa secondo le modalità indicate nei successivi articoli.)

Art. 328 CPC⁶⁰ Judge for Preliminary Investigations

1. In cases provided for by law, on the requests of the public prosecutor, private parties and the person offended by the crime, the judge for preliminary investigations shall decide.

1-bis. When it concerns proceedings for the offences indicated in Article 51 (paragraphs 3-bis and 3-quater,) the functions of the judge for preliminary investigations are exercised, except for specific provisions of law, by a magistrate of the court of the capital of the district in which the competent judge has his seat.

1-ter (paragraph repealed by decree law no. 92 of 23 May 2008, converted with amendments by act no 125 of 24 July 2008).

1-quater. When dealing with proceedings for the offences indicated in Article 51, paragraph 3-quinquies, the functions of judge for preliminary investigations and the functions of judge for the preliminary hearing shall be exercised, except for specific provisions of law, by a magistrate of the court of the capital of the district in which the competent judge is sitting.

Decree-Law No. 82 of 7 April 2000, converted with amendments by L. 5 June 2000, no. 144 provided (with Art. 4-bis, paragraph 1) that “The provision of Article 328, paragraph 1-bis, of the Code of criminal procedure must be interpreted as meaning that when it concerns proceedings for the offences indicated in Article 51, paragraph 3-bis, of the Code of Criminal Procedure, also the functions of judge for the preliminary hearing are exercised by a magistrate of the court of the capital of the district in which the competent judge has his seat”.

Art. 330 CPC⁶¹ Acquisition of reports of offences

1. The public prosecutor and the judicial police shall take cognizance of offences on their own initiative and receive reports of offences submitted or forwarded in accordance with the following articles.

⁶⁰ **Art. 328 Codice di Procedura Penale** Giudice per le indagini preliminari

1. Nei casi previsti dalla legge, sulle richieste del pubblico ministero, delle parti private e della persona offesa dal reato, provvede il giudice per le indagini preliminari.

1-bis. Quando si tratta di procedimenti per i delitti indicati nell'articolo 51 (commi 3-bis e 3-quater,) le funzioni di giudice per le indagini preliminari sono esercitate, salve specifiche disposizioni di legge, da un magistrato del tribunale del capoluogo del distretto nel cui ambito ha sede il giudice competente. (111)

1-ter (COMMA ABROGATO DAL D.L. 23 MAGGIO 2008, N. 92 CONVERTITO CON MODIFICAZIONI DALLA L. 24 LUGLIO 2008, N. 125).

(1-quater. Quando si tratta di procedimenti per i delitti indicati nell'articolo 51, comma 3-quinquies, le funzioni di giudice per le indagini preliminari e le funzioni di giudice per l'udienza preliminare sono esercitate, salve specifiche disposizioni di legge, da un magistrato del tribunale del capoluogo del distretto nel cui ambito ha sede il giudice competente.)

⁶¹ **Art. 330. Codice di Procedura Penale** Acquisizione delle notizie di reato

1. Il pubblico ministero e la polizia giudiziaria prendono notizia dei reati di propria iniziativa e ricevono le notizie di reato presentate o trasmesse a norma degli articoli seguenti.

Art. 335 CPC⁶² Register of crime reports.

1. The Public Prosecutor shall *immediately enter, in the special register kept at the office, every report of an offence that comes to his knowledge or that he has acquired on his own initiative*, containing the description of a fact, specific and not implausible, that may hypothetically be subsumed under an incriminating provision. The entry shall indicate, where ascertainable, the circumstances of time and place of the fact.

1-bis. The Public Prosecutor shall proceed to the entry of the name of the person to whom the offence is attributed as soon as there emerge, either at the same time as the entry of the report of the offence or subsequently, indications against him.

1-ter. Where he has not proceeded in good time in accordance with paragraphs 1 and 1-bis, at the moment of ordering the entry the Public Prosecutor may also indicate the earlier date from which it shall be deemed to have been effected.

2. If, in the course of the preliminary investigations, the legal classification of the fact changes, or the fact proves to have different circumstances, the Public Prosecutor shall ensure that the entries provided for in paragraph 1 are updated, without making new entries.

3. Except in cases concerning one of the offences referred to in Article 407, paragraph 2, letter a), the entries referred to in paragraphs 1 and 2 shall be communicated, upon request, to the person to whom the offence is attributed, to the injured party, and to their respective counsel.

3-bis. Where there exist specific needs connected with the investigative activity, the Public Prosecutor, in deciding on the request, may order, by a reasoned decree, secrecy over the entries for a period not exceeding three months and not renewable.

⁶² **Art. 335 Codice Di Procedura Penale** Registro delle notizie di reato

1. Il pubblico ministero iscrive immediatamente, nell'apposito registro custodito presso l'ufficio, ogni notizia di reato che gli perviene o che ha acquisito di propria iniziativa, contenente la rappresentazione di un fatto, determinato e non inverosimile, riconducibile in ipotesi a una fattispecie incriminatrice. Nell'iscrizione sono indicate, ove risultino, le circostanze di tempo e di luogo del fatto.

1-bis. Il pubblico ministero provvede all'iscrizione del nome della persona alla quale il reato è attribuito non appena risultino, contestualmente all'iscrizione della notizia di reato o successivamente, indizi a suo carico.

1-ter. Quando non ha provveduto tempestivamente ai sensi dei commi 1 e 1-bis, all'atto di disporre l'iscrizione il pubblico ministero può altresì indicare la data anteriore a partire dalla quale essa deve intendersi effettuata.

2. Se nel corso delle indagini preliminari muta la qualificazione giuridica del fatto ovvero questo risulta diversamente circostanziato, il pubblico ministero cura l'aggiornamento delle iscrizioni previste dal comma 1 senza procedere a nuove iscrizioni.

3. Ad esclusione dei casi in cui si procede per uno dei delitti di cui all'articolo 407, comma 2, lettera a), le iscrizioni previste ai commi 1 e 2 sono comunicate alla persona alla quale il reato è attribuito, alla persona offesa e ai rispettivi difensori, ove ne facciano richiesta.

3-bis. Se sussistono specifiche esigenze attinenti all'attività di indagine, il pubblico ministero, nel decidere sulla richiesta, può disporre, con decreto motivato, il segreto sulle iscrizioni per un periodo non superiore a tre mesi e non rinnovabile.

3-ter. Senza pregiudizio del segreto investigativo, decorsi sei mesi dalla data di presentazione della denuncia, ovvero della querela, la persona offesa dal reato può chiedere di essere informata dall'autorità che ha in carico il procedimento circa lo stato del medesimo.

3-ter. Without prejudice to investigative secrecy, after six months from the date of the filing of the complaint or report, the injured party may request to be informed by the authority responsible for the proceedings as to the status thereof.

Title IV Activities At The Initiative Of The Judicial Police

Art. 347 CPC⁶³ Obligation to report the crime

1. Having acquired the crime report, the judicial police, without delay, report to the public prosecutor, in writing, the essential elements of the fact and the other elements collected up to then, indicating the sources of evidence and the activities carried out, of which it transmits related documentation.

2. It also communicates, when possible, the personal details, the address and whatever else is valid for the identification of the person against whom the investigations are carried out, of the person offended by the crime and of those who are able to report on circumstances relevant to the reconstruction of the facts.

2-bis. If acts have been carried out for which the assistance of the defender of the person against whom the investigations are carried out is provided, the notification of the crime is sent no later than forty-eight hours from the completion of the deed, without prejudice to the provisions of the law which provide for special terms.

3. In the case of one of the crimes indicated in article 407, paragraph 2, letter a), numbers from 1) to 6), of this code, or one of the crimes provided for in articles 572, 609-bis, 609-ter, 609-quater, 609-quinquies, 609-octies, 612-bis and 612-ter of the criminal code, or by articles 582 and 583-quinquies of the criminal code in the aggravated cases pursuant to articles 576, first paragraph, numbers 2, 5 and 5.1, and 577, first paragraph, number 1, and second paragraph, of the same criminal code, and, in any case, when there are reasons of urgency, the notification of the crime is given immediately, also in oral

⁶³ **Titolo IV**

ATTIVITA' A INIZIATIVA DELLA POLIZIA GIUDIZIARIA

Art. 347. Codice di Procedura Penale Obbligo di riferire la notizia del reato

1. Acquisita la notizia di reato, la polizia giudiziaria, senza ritardo, riferisce al pubblico ministero, per iscritto, gli elementi essenziali del fatto e gli altri elementi sino ad allora raccolti, indicando le fonti di prova e le attività compiute, delle quali trasmette la relativa documentazione.

2. Comunica, inoltre, quando e' possibile, le generalita', il domicilio e quanto altro valga alla identificazione della persona nei cui confronti vengono svolte le indagini, della persona offesa e di coloro che siano in grado di riferire su circostanze rilevanti per la ricostruzione dei fatti.

2-bis. Qualora siano stati compiuti atti per i quali e' prevista l'assistenza del difensore della persona nei cui confronti vengono svolte le indagini, la comunicazione della notizia di reato e' trasmessa al piu' tardi entro quarantotto ore dal compimento dell'atto, salve le disposizioni di legge che prevedono termini particolari.

3. Se si tratta di taluno dei delitti indicati nell'articolo 407, comma 2, lettera a), numeri da 1) a 6) (, del presente codice, o di uno dei delitti previsti dagli articoli 572, 609-bis, 609-ter, 609-quater, 609-quinquies, 609-octies, 612-bis e 612-ter del codice penale, ovvero dagli articoli 582 e 583-quinquies del codice penale nelle ipotesi aggravate ai sensi degli articoli 576, primo comma, numeri 2, 5 e 5.1, e 577, primo comma, numero 1, e secondo comma, del medesimo codice penale,) e, in ogni caso, quando sussistono ragioni di urgenza, la comunicazione della notizia di reato e' data immediatamente anche in forma orale.

Alla comunicazione orale deve seguire senza ritardo quella scritta con le indicazioni e la documentazione previste dai commi 1 e 2.

4. Con la comunicazione, la polizia giudiziaria indica il giorno e l'ora in cui ha acquisito la notizia.

form. The oral communication must be followed without delay by the written one with the indications and documentation provided for in paragraphs 1 and 2.

4. With the communication, the judicial police indicate the day and time in which the news was acquired.

Art. 370 CPC⁶⁴ Direct and Delegated Acts

1. The public prosecutor shall personally carry out any investigation. He may have recourse to the judicial police for the performance of investigative activities and specifically delegated acts, including interrogations and confrontations in which the person under investigation who is in a state of liberty participates, with the necessary assistance of a defence counsel.

2. When proceeding in accordance with paragraph 1, the judicial police shall observe the provisions of Articles 364, 365 and 373.

2-bis. If it concerns (the offence provided for in Article 575 of the Criminal Code, in the form of an attempt, or of one of the offences, whether committed or attempted,) provided for in Articles 364, 365 and 374. attempted,) provided for in Articles 572, 609-bis, 609-ter, 609-quater, 609-quinquies, 609-octies, 612-bis and 612-ter of the Penal Code or by Articles 582 and 583-quinquies of the Penal Code in cases of aggravated cases pursuant to Articles 576, first paragraph, numbers 2, 5, 5.1, and 577, first paragraph, number 1, and second paragraph, of the same Code, the judicial police shall proceed without delay to perform the acts delegated by the public prosecutor.

2-ter. In the cases referred to in paragraph 2-bis, the judicial police shall place without delay at the disposal of the public prosecutor the documentation of the activity in the form and manner provided for in Article 357.

⁶⁴ **Art. 370. Codice di Procedura Penale** Atti diretti e atti delegati

1. Il pubblico ministero compie personalmente ogni attivita' di indagine. Puo' avvalersi della polizia giudiziaria per il compimento di attivita' di indagine e di atti specificamente delegati, ivi compresi gli interrogatori ed i confronti cui partecipi la persona sottoposta alle indagini che si trovi in stato di liberta,' con l'assistenza necessaria del difensore.

2. Quando procede a norma del comma 1, la polizia giudiziaria osserva le disposizioni degli articoli 364, 365 e 373.

2-bis. Se si tratta (del delitto previsto dall'articolo 575 del codice penale, nella forma tentata, o di uno dei delitti, consumati o tentati,) previsti dagli articoli 572, 609-bis, 609-ter, 609-quater, 609-quinquies, 609-octies, 612-bis e 612-ter del codice penale, ovvero dagli articoli 582 e 583-quinquies del codice penale nelle ipotesi aggravate ai sensi degli articoli 576, primo comma, numeri 2, 5, 5.1, e 577, primo comma, numero 1, e secondo comma, del medesimo codice, la polizia giudiziaria procede senza ritardo al compimento degli atti delegati dal pubblico ministero.

2-ter. Nei casi di cui al comma 2-bis, la polizia giudiziaria pone senza ritardo a disposizione del pubblico ministero la documentazione dell'attivita' nelle forme e con le modalita' previste dall'articolo 357.

3. Per singoli atti da assumere nella circoscrizione di altro tribunale, il pubblico ministero, qualora non ritenga di procedere personalmente, puo' delegare, secondo la rispettiva competenza per materia, il pubblico ministero presso il tribunale del luogo. (90) (90a)

4. Quando ricorrono ragioni di urgenza o altri gravi motivi, il pubblico ministero delegato a norma del comma 3 ha facolta' di procedere di propria iniziativa anche agli atti che a seguito dello svolgimento di quelli specificamente delegati appaiono necessari ai fini delle indagini.

3. For individual acts to be taken in the jurisdiction of another court, the public prosecutor, if he does not consider to proceed personally, may delegate, in accordance with their respective competence in the subject matter, the public prosecutor at the local court. (90) (90a)
4. When reasons of urgency or other serious grounds exist, the public prosecutor delegated pursuant to paragraph 3 shall be entitled to proceed on its own initiative also to the acts that following the performance of those specifically delegated appear necessary for the purposes of the investigation.

The special rules for the Italian EDPs are determined by the EPPO Adoption Law:

10

Legislative Decree February 2, 2021, n. 9

Provisions for the adaptation of national legislation to the provisions of Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of enhanced cooperation on the establishment of the European Public Prosecutor's Office "EPPO".

(21G00012)⁶⁵

Art. 14⁶⁶ Communication and registration of crime reports within the competence of the European Public Prosecutor's Office [by the Italian regional offices]

1. The communications referred to in Article 347 of the Code of Criminal Procedure, the reports, complaints, allegations and subsequent other acts, however named, which concern crimes in relation to which the European Public Prosecutor's office could exercise its competence pursuant to Articles 22 and 25 (2) and 25 (3) of the Regulation are presented or transmitted, in addition to the national prosecutor, to the European Delegated Prosecutor.

⁶⁵ **Decreto Legislativo 2 febbraio 2021, n. 9**

Disposizioni per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1939 del Consiglio, del 12 ottobre 2017, relativo all'attuazione di una cooperazione rafforzata sull'istituzione della Procura europea «EPPO». (21G00012)

⁶⁶ **Art. 14** Comunicazione e iscrizione di notizie di reato di competenza della Procura europea

1. Le comunicazioni di cui all'articolo 347 del codice di procedura penale, le denunce, le querele, gli esposti e gli ulteriori atti comunque denominati che hanno ad oggetto reati in relazione ai quali la Procura europea potrebbe esercitare la sua competenza ai sensi degli articoli 22 e 25, paragrafi 2 e 3, del regolamento sono presentati o trasmessi, oltre che al pubblico ministero nazionale, al procuratore europeo delegato.

2. Quando riceve o acquisisce di propria iniziativa notizia di uno dei reati di cui al comma 1, il pubblico ministero provvede agli adempimenti previsti dall'articolo 335, primo comma, del codice di procedura penale, se la Procura europea non ha già comunicato di esercitare la sua competenza e risulta necessario procedere al compimento di atti urgenti o vi è comunque motivo di ritenere che un ritardo nell'avvio delle indagini possa comprometterne l'esito.

3. Fuori dai casi previsti dal comma 2, il pubblico ministero dispone l'annotazione della notizia di reato in apposito registro, tenuto in forma automatizzata, che il Ministro della giustizia istituisce con proprio decreto da adottare entro trenta giorni dall'entrata in vigore del presente decreto.


4. Quando la Procura europea comunica che non intende esercitare la sua competenza e, in ogni caso, decorsi trenta giorni dalla annotazione prevista dal comma 3, il pubblico ministero procede immediatamente agli adempimenti previsti dall'articolo 335, comma 1, del codice di procedura penale.

5. Il pubblico ministero informa la Procura europea dell'iscrizione del procedimento e dell'avvio delle indagini preliminari ai sensi del comma 2.

2. When he/she receives or acquires news of one of the offenses referred to in paragraph 1 on his own initiative, the public prosecutor shall fulfil the obligations provided for in article 335, first paragraph, of the Code of Criminal Procedure, if the European Public Prosecutor's office has not already communicated to exercise its competence and it is necessary to proceed with the completion of urgent acts or there is in any case reason to believe that a delay in the start of the investigation could compromise the outcome.
3. Apart from the cases provided for in paragraph 2, the public prosecutor orders the notation of the crime report in a special register, kept in an automated form, which the Minister of Justice establishes with his own decree to be adopted within thirty days from the entry into force of this decree.
4. When the European Public Prosecutor's office announces that it does not intend to exercise its competence and, in any case, after thirty days from the annotation referred to in paragraph 3, the public prosecutor immediately proceeds with the obligations provided for by Article 335, paragraph 1, of the Code of criminal Procedure.
5. The public prosecutor informs the EPPO of the registration of the procedure and the start of the preliminary investigations pursuant to paragraph 2.

bb. Determination of the competence and verification of Crime Reports

- 11 The first task of the EDPs in an Italian regional office is to determine whether the EPPO has competence and jurisdiction or can obtain competence and exercise jurisdiction (see below, Art. 27 → p. 131). These are formal but essential questions. They are determined by means of Union secondary legislation and special delegated guidelines required by secondary legislation, the so-called **Internal Rules on Procedure [of the EPPO]**. This depends on the criteria of the Regulation (see Art. 22, 23).

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

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

- 12 For the EPPO to be competent, the requirements of the Regulation must be met.
- 13 Either an examination according to Art. 24 para 6 must show that the EPPO is competent or the delegated prosecutor carries out an examination and assessment by virtue of Art. 26 para 1 EPPO Regulation himself/herself without informing the Permanent Chamber and initiates an investigation about which he/she subsequently informs the Permanent Chamber. The IRP rules state the following:

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

1. The verification for the purpose of initiating an investigation shall assess whether:

- a) the reported conduct constitutes a criminal offence falling under the material, territorial, personal and temporal competence of the EPPO;
- b) ***there are reasonable grounds under the applicable national law*** to believe that an offence is being or has been committed;
- c) there are obvious legal grounds that bar prosecution;
- d) where applicable, the conditions prescribed by Article 25(2), (3) and (4) of the Regulation are met.
2. The verification for the purpose of evocation shall additionally assess:
- a) the maturity of the investigation;
- b) the relevance of the investigation with regard to ensuring the coherence of the EPPO's investigation and prosecution policy;
- c) the cross-border aspects of the investigation;
- d) the existence of any other specific reason, which suggests that the EPPO is better placed to continue the investigation.
3. The ***verification shall be carried out using all sources of information available*** to the EPPO as well as any sources ***available to the European Delegated Prosecutor, in accordance with applicable national law***, including ***those otherwise available to him / her if acting in a national capacity***. The European Delegated Prosecutor may make use of the staff of the EPPO for the purpose of the verification. Where appropriate, the EPPO may consult and exchange information with Union institutions, bodies, offices or agencies, as well as national authorities, subject to the protection of the integrity of a possible future criminal investigation.
4. The European Delegated Prosecutor shall finalise the verification related to the evocation of an investigation at least 2 days before the expiration of the deadline prescribed by Article 27(1) of the Regulation. The verification related to initiating an investigation shall be finalised no later than 20 days following the assignment.
5. If the European Delegated Prosecutor does not finalise the verification on whether or not to initiate an investigation within the prescribed time limit, or he/she informs their inability to do so within the foreseen time limit, the European Prosecutor shall be informed and where deemed appropriate extend the time available or issue an appropriate instruction to the European Delegated Prosecutor.
6. Where it concerns a decision on evocation, the European Delegated Prosecutor may ask the European Chief Prosecutor to extend the time limit needed to adopt a decision on evocation by up to 5 days.
7. Where the European Delegated Prosecutor does not issue a decision within the time limit, it shall be treated as a consideration not to evoke a case, and Article 42 applied accordingly.

The EDP shall, within the framework of national procedural law, assess whether:

14

- a) the reported conduct constitutes a criminal offence falling under the material, territorial, personal, and temporal competence of the EPPO (Arts. 22–23);
 - b) reasonable grounds to suspect the commission of such an offence exist under the applicable national law;
 - c) no manifest legal grounds for exclusion of prosecution are present;
 - d) where relevant, the conditions of Article 25 para 2 to 4 on the exercise of competence and shared jurisdiction are satisfied.
- 15** This verification is to be completed using all sources of information available to the EDP, including national databases and registers, and in accordance with Art. 40 para 3 IRP, in cooperation with Union bodies or national authorities if necessary. If the EDP concludes that the **threshold of suspicion is met**, he or she may initiate an investigation (Art. 26 para 1) and inform the Permanent Chamber thereafter. If the case involves potential evocation of a national investigation (Art. 27), the EDP must additionally assess the maturity of the investigation, cross-border implications, and coherence with EPPO policy (Art. 40 para 2 IRP). In practice, competence is established where: the offence is committed in whole or in part in a participating Member State, the offence is committed by a national of a participating Member State or an EU official, or the case otherwise meets the PIF offence criteria under Art. 22 and the Italian EPPO Adoption Act.
- 16** As an Italian EDP one must document the verification in the EPPO Case Management System, ensure that any decision to initiate or decline an investigation is reasoned and compliant with Arts. 22–25, and immediately notify the Permanent Chamber of the outcome, thus ensuring full traceability and compliance with the EPPO hierarchical structure.
- 17** The verification to initiate an investigation must be completed within 20 days of case assignment (Art. 40(4) IRP).
- 18** A source can **help to understand the transfer of information**: Notification of the Italian Government from 2021 by virtue of Art. 117 EPPO Regulation⁶⁷ (see below → p. 249).
- (2) Competence of the EPPO, Art. 26 para 4**
- 19** The competence of the EPPO depends on the focus of the offences, which might not be Italian territory. For conflicts the EPPO Regulation prescribes a detailed rhythm that needs to be followed by Italian EDPs, too.

⁶⁷ From the point-of-view of Brodowski and Herrfeld Art. 117 EPPO is only an indication for PIF implementation laws and has no legal validity character.

(3) Jurisdiction of the EDPs in Italy

The jurisdiction of Italian EDPs depends on the rules of the CPC, Art. 11 of the PIF Directive and subsequent Implementation Acts as well as internal administrative Agreements connected to the Legislative Decree of 8 February 2021.⁶⁸ The regional offices of the EPPO in Italy were presented above. **20**

(4) Internal Agreement on Jurisdiction of the regional office of the EPPO in Italy as stipulated by the EPPO Adoption Act

The regional offices act within their county but have nevertheless the power to conduct investigations **on the whole territory** (see Art. 9 para 2 Legislative Decree 8 February 2021 Powers of the European Delegated Prosecutors and the European Prosecutor).⁶⁹ **21**

cc. How to assess and verify the suspicion level according to Art. 26 para 1

Pursuant to Article 26 para 1 EPPO Regulation, criminal proceedings may only be initiated where **reasonable grounds** exist to suspect the commission of an offence falling within the material competence of the EPPO (e.g., subsidy fraud or other crimes affecting the Union's financial interests under the PIF Directive, see below). This initial suspicion serves as the **procedural trigger for the exercise of EPPO competence**, corresponding in functional terms to the registration of a *notitia criminis* under Articles 330–335 c.p.p. in the Italian legal system. **22**

⁶⁸ See Belfiore 2022, pp. 47–63 and see Panzavolta 2022, pp. 93–133.

⁶⁹ Belfiore 2022, pp. 53 et seq.

(1) The PIF offences in Italian criminal law and the role of the Highest Criminal Court and the General Prosecution Office at the Italian Supreme Court

- 23 The PIF Directive has been closely studied by Italian academia.⁷⁰ The following provisions stem from the self-assessment of the Italian Government and its notification to the EPPO. The Italian *Corte di Cassazione* is the equivalent criminal court to the German *Bundesgerichtshof* in Strafsachen (*Karlsruhe, Leipzig*). The *Corte di Cassazione* has a function in criminal matters and judges on the interpretation of the Italian national PIF-Law and the criminal procedural law, which concerns the actions of the EPPO in Italy. The General Prosecution Office at the Italian Supreme Court is competent to deal with all criminal matters from the regions of the Italian State and it has the task to carry out disciplinary investigations against judges and prosecutors and acts as well in civil matters, but it cannot intervene against decisions of the EPPO or the Italian EDPs, which are located in the Regional Centers of the EPPO in Italy. EDPs must know the latest decisions of the *Corte di Cassazione* in the areas of corruption offences, fraud offences in general, embezzlement, civil servant offences, tax offences, especially VAT fraud offences, customs duties offences etc.



Be aware that there is a protocol, constituted as the first **cooperation agreement between the EPPO and an accounting judiciary** of a Member State, which was signed in September 2021.⁷¹ The agreement was made public to all Italian EDPs and is available as well through the **EPPO Legal Service Office** in Luxembourg, which handles all cooperation agreements of the EPPO.

- 24 The following pages summarise the main Italian PIF Acquis Offences but first see how the corrective Decree No. 156/2022 (in force 6 Nov 2022) functions due to implementation shortcomings, refined international corruption (Art. 322-bis c.p.), strengthened confiscation in customs and EU-fund cases, extended attempt liability for major cross-border VAT fraud, and aligned corporate liability thresholds with the PIF criteria:

⁷⁰ See e.g. Parisi and Rinoldi 2019, pp. 386–425.

⁷¹ SWD(2022) 305 final, 29.

Table 6: New PIF Acquis Offences Decree 156/2022

Law 898/1986, Art. 2	EU agricultural/structural fund fraud	Art. 3 para 2 (a)	Fraud affecting EU expenditure	Art. 3 of Decree 156/2022: value confiscation via 240-bis, 322-ter c.p.
DPR 43/1973, arts. 282–292, 294	Customs smuggling harming EU TR	Art. 3 para 2 (b)	Fraud affecting EU revenues (traditional own resources)	Art. 2 Decree 156/2022: equivalent-value confiscation if goods unavailable.
Art. 319-quarter(2), 321, 322, 322-bis c.p.	Active/passive/international corruption	Art. 4	Corruption affecting EU financial interests	Art. 1 Decree 156/2022: 322-bis now includes <i>abuse of office</i> reference.
D.Lgs 74/2000, arts. 2–11	VAT/tax crimes	Art. 3 para 2 (d) + Art. 5	VAT fraud (serious, cross-border)	Art. 4 Decree 156/2022: attempt liability for cross-border VAT schemes above €10m ; extends to arts. 2, 3 (besides Art. 4).
D.Lgs 231/2001, Art. 25-quinquiesdecies	Corporate liability for VAT fraud	Art. 8	Legal persons' liability for PIF VAT crimes	Art. 5 Decree 156/2022: aligns to cross-border VAT above threshold.

Be aware that according to current research Italy does **not recognise a separate offence** of “**cyber-VAT fraud**”. Instead, digital VAT fraud is subsumed under the existing VAT fraud. Italian doctrine considers VAT fraud a “free-form” offence, meaning that the use of digital or cyber tools does not alter the legal classification of the offence but merely the *modus operandi*.⁷² Italian law covers all conduct required under Article 3 PIF, including fraud affecting EU financial interests, use of false documentation, tax evasion schemes, and fraudulent VAT declarations: Article 316-ter, 640-bis, Decree 74/2000.

⁷² Di Nicola, Flor and Baratto 2025, p. 56 et seq., 99 et seq. focusing on digital VAT fraud scenarios within an OLAF study and finding conclusions as well as Policy Recommendations to better enable the EPPO to fight the digital PIF crimes. To better regulate cyber VAT fraud de lege ferenda, the project proposes a shift from creating new criminal categories toward achieving deeper operational and procedural harmonisation. This includes strengthening the PIF Directive's enforcement, establishing a uniform EU-level definition of VAT fraud, and integrating cyber elements as specific aggravating circumstances rather than separate offences; Carroccia thesis.

Sources & national sections 1: PIF offences in Italy

CC fraud offences	CC corruption + AML offences	Tax and Customs (Decree/Code) offences
<ul style="list-style-type: none"> • [all Codice penale:] • Articles 316-bis [concerning funds of European origin/<i>Malversazione di erogazioni pubbliche</i>], • 316-ter [concerning funds of European origin], • 356, • 640, par. 2 no. 1) [concerning funds of European origin], • 640-bis [concerning funds of European origin], • 640-ter, par. 2; • Article 2 of Law no. 898 of 23 December 1986 2 n. 1) [on funds of European origin], 640-bis [on funds of European origin], 640-ter, 2° comma; Article 2 of Law n. 898 of 23 December 1986; • Articles 282 et seq. of Presidential Decree n. 43 of 23 January 1973. 43 of Presidential Decree No. 43 of 23 January 1973. 	<ul style="list-style-type: none"> • Corruption offences: • articles 319-quater, par. 2, 321, 322 and 322-bis of the criminal code. • articles 314, 316, 323 of the criminal code. • AML offences: • articles 379, • 512-bis, • Art. 648 (very important and newly constructed) • Art. 648-bis, 648-ter and 648-ter. 1 of the criminal code • [+ Article 357 of the Criminal Code Concept of public official Art. 358 c.p. Notion of the person in charge of a public service] 	<ul style="list-style-type: none"> • Legislative Decree March 10, 2000, n. 74, Art. 2-11 • The Presidential Decree No. 43 from Article 282 (Smuggling in the movement of goods across land borders and customs spaces) • Article 283 (Smuggling in the movement of goods in border lakes) • Article 284 (Contraband in the maritime movement of goods) • Article 285 (Smuggling in the movement of goods by air) • Article 286 (Smuggling in extra-doga areas) • Article 287 (Smuggling for improper use of goods imported with customs facilities) • Article 288 (Contraband in customs warehouses) • Article 289 (Contraband in cabotage and traffic) • Article 290 (Contraband in the export of goods eligible for restitution of rights). • Article 291 (Contraband in temporary import or export) • Article 291-bis (Smuggling of foreign manufactured tobaccos) • Article 291-ter (Aggravating circumstances of the crime of smuggling foreign manufactured tobacco) • Article 291-quater (Criminal association aimed at smuggling foreign manufactured tobacco) • Article 292 (Other cases of smuggling) • Article 294 (Penalty for smuggling in the event of failure or incomplete ascertainment of the object of the offense) • association offences aimed at the commission of offences [“mafia-clause”] mentioned in the previous paragraphs [Art. 291, 329 D.R.P: n°43 1973]

25 Article 2 of the Legislative Decree of 10 March 2000 provides for a penalty of imprisonment for the fraudulent declaration made through the use of invoices or other documents relating to non-existent transactions:

Article 2. Fraudulent declaration by use of invoices or other documents for non-existent transactions⁷³ Legislative Decree March 10, 2000, n. 74 26

1. A penalty of imprisonment from (four to eight) years shall be imposed on anyone who, in order to evade income tax or value added tax making use of invoices or other documents for non-existent transactions indicates in one of the declarations relating to such taxes fictitious liabilities.

2. The act shall be deemed to have been committed by availing oneself of invoices or other documents for non-existent transactions when such invoices or documents are recorded in compulsory accounting records, or are held for evidence against the tax authorities. (2-bis. If the amount of the fictitious passive elements is less than one hundred thousand euro, the penalty shall be imprisonment from one year and six months to six years. six years.)

On 28 September 2022 a corrective to the Legislative Decree no. 75 of 14 July 2020 implementing Directive (EU) 2017/1371 has been approved by Legislative Decree 4 October 2022, n. 156. 27

This corrective Decree entered into force 6 November 2022 and provides for the following provisions: 28

Legislative Decree No. 156 of 4 October 2022. 29

Article 1⁷⁴ Amendment of Article 322 -bis of the Criminal Code

1. In Article 322 -bis of the Penal Code, approved in the final text by Royal Decree No. 1398 of 19 October 1930, No. 1398 of 19 October 1930, the following amendments shall be made

(a) in the heading, after the words “incitement to corruption” the following shall be inserted: “abuse of office”;

(b) in the first paragraph, the words: ‘and 322, third and fourth paragraphs,’ shall be replaced by the following: “322, third and fourth paragraphs, and 323”.

⁷³ **Art. 2. Dichiarazione fraudolenta mediante uso di fatture o altri documenti per operazioni inesistenti Decreto Legislativo 10 marzo 2000, n. 74**

1. E' punito con la reclusione da (quattro a otto) anni chiunque, al fine di evadere le imposte sui redditi o sul valore aggiunto, avvalendosi di fatture o altri documenti per operazioni inesistenti, indica in una delle dichiarazioni relative a dette imposte elementi passivi fittizi. (8).

2. Il fatto si considera commesso avvalendosi di fatture o altri documenti per operazioni inesistenti quando tali fatture o documenti sono registrati nelle scritture contabili obbligatorie, o sono detenuti a fine di prova nei confronti dell'amministrazione finanziaria. (2-bis. Se l'ammontare degli elementi passivi fittizi e' inferiore a euro centomila, si applica la reclusione da un anno e sei mesi a sei anni.) (8)

⁷⁴ **Art. 1. Modifica dell'articolo 322 -bis del codice penale**

1. All'articolo 322 -bis del codice penale, approvato nel testo definitivo con regio decreto 19 ottobre 1930, n. 1398, sono apportate le seguenti modificazioni:

a) nella rubrica, dopo le parole “istigazione alla corruzione” sono inserite le seguenti: “, abuso d'ufficio”;

b) al primo comma, le parole: “e 322, terzo e quarto comma,” sono sostituite dalle seguenti: “, 322, terzo e quarto comma, e 323”.

Article 2⁷⁵ Amendment of Article 301 of Decree of the President of the Republic No. 43 of 23 January 1973

1. The following sentence shall be added to Article 301(1) of Presidential Decree No. 43 of 23 January 1973, in fine end: “Where it is not possible to confiscate the items referred to in the previous sentence, the confiscation of sums of money, goods and other benefits having an equivalent value, which the convicted person has at his disposal, including through intermediaries, shall be ordered.”.

Article 3⁷⁶ Amendment of Article 2 of Law No 898 of 23 December 1986

1. In Article 2 of Law No 898 of 23 December 1986 the following paragraph shall be added after paragraph 3: “3 -bis. In cases of conviction or application of the penalty on request pursuant to Article 444 of the Code of Criminal Procedure for the offence referred to in paragraph 1, the provisions contained in Articles 240-bis and 322-ter of the Criminal Code are observed Criminal Code, insofar as they are compatible”.

- 30** The first articles of the decree already essentially **broaden corruption-related offences** to cover abuse of office, and strengthens confiscation powers, including value-based confiscation and extended application of confiscation provisions after convictions or plea agreements. The decree further **amends Legislative Decree 74/2000** to extend attempt liability for certain VAT-related offences where committed in large-scale cross-border fraudulent schemes involving at least one other EU Member State and causing, or likely to cause, damage of €10 million or more. Corresponding **amendments to Legislative Decree 231/2001 align corporate liability** with these provisions. A financial invariance clause stipulates that implementation shall impose no new burdens on public finances, with obligations to be met from existing resources.

⁷⁵ **Art. 2. Modifica dell’articolo 301 del decreto del Presidente della Repubblica 23 gennaio 1973, n. 43**

1. All’articolo 301, comma 1, del decreto del Presidente della Repubblica 23 gennaio 1973, n. 43, è aggiunto, in fine, il seguente periodo: “Quando non è possibile procedere alla confisca delle cose di cui al periodo precedente, è ordinata la confisca di somme di danaro, beni e altre utilità per un valore equivalente, di cui il condannato ha la disponibilità, anche per interposta persona.”.

⁷⁶ **Art. 3. Modifica dell’articolo 2 della legge 23 dicembre 1986, n. 898**

1. All’articolo 2 della legge 23 dicembre 1986, n. 898, dopo il comma 3, è aggiunto il seguente: “3 -bis . Nei casi di condanna o di applicazione della pena su richiesta a norma dell’articolo 444 del codice di procedura penale per il delitto di cui al comma 1, si osservano le disposizioni contenute negli articoli 240 -bis e 322 -ter del codice penale, in quanto compatibili”.

Article 4⁷⁷ Amendment of Article 6 of Legislative Decree No. 74 of 10 March 2000

1. In Article 6 of Legislative Decree No. 74 of 10 March 2000, No 74 shall be amended as follows

(a) in paragraph 1, the word “however” shall be deleted and after the word “attempt” the following shall be added: “except as provided for in subsection 1-a”;

(b) Paragraph 1 -a shall be replaced by the following: “When the conduct is carried out for the purpose of evading value added tax as part of fraudulent schemes cross-border, connected to the territory of at least one other Member State of the European Union, which results or is likely to result in total damage equal to or exceeding 10,000,000 euro, the offence provided for in Article 4 is punishable as an attempt. Apart from cases of complicity in the offence provided for in Article 8, the offences provided for in Articles 2 and 3 are punishable by way of attempt, when the same conditions as in the first paragraph are met.”

Article 5⁷⁸ Amendment of Article 25 -quinquiesdecies of Legislative Decree no. 231 of 8 June 2001

1. In Article 25-quinquiesdecies, paragraph 1 -bis, of Legislative Decree no. 231 of 8 June 2001, the words from “if committed within” to “a total amount not less than” shall be replaced by the following: “when they are committed for the purpose of evading value added tax within the framework of cross-border fraudulent schemes connected to the territory of at least one other Member State of the European Union, which results or is likely to result in an equal or greater overall damage”.

⁷⁷ **Art. 4. Modifica dell’articolo 6 del Decreto Legislativo 10 marzo 2000, n. 74**

1. All’articolo 6 del decreto legislativo 10 marzo 2000, n. 74 sono apportate le seguenti modificazioni: a) al comma 1, la parola “comunque” è soppressa e dopo la parola “tentativo” sono aggiunte le seguenti: “, salvo quanto previsto al comma 1 -bis” ; b) il comma 1 -bis è sostituito dal seguente: “Quando la condotta è posta in essere al fine di evadere l’imposta sul valore aggiunto nell’ambito di sistemi fraudolenti transfrontalieri, connessi al territorio di almeno un altro Stato membro dell’Unione europea, dai quali consegue o possa conseguire un danno complessivo pari o superiore a euro 10.000.000, il delitto previsto dall’articolo 4 è punibile a titolo di tentativo. Fuori dei casi di concorso nel delitto di cui all’articolo 8, i delitti previsti dagli articoli 2 e 3 sono punibili a titolo di tentativo, quando ricorrono le medesime condizioni di cui al primo periodo.”.

⁷⁸ **Art. 5. Modifica dell’articolo 25 -quinquiesdecies del Decreto Legislativo 8 giugno 2001, n. 231**

1. All’articolo 25- quinquiesdecies , comma 1 -bis , del decreto legislativo 8 giugno 2001, n. 231, le parole da “se commessi nell’ambito” a “un importo complessivo non inferiore” sono sostituite dalle seguenti: “quando sono commessi al fine di evadere l’imposta sul valore aggiunto nell’ambito di sistemi fraudolenti transfrontalieri connessi al territorio di almeno un altro Stato membro dell’Unione europea, da cui consegue o possa conseguire un danno complessivo pari o superiore”.

Article 6⁷⁹ Financial Invariance Clause

1. The execution of this Decree shall not result in new or greater burdens on the public finance.

2. The Administrations concerned shall provide for the fulfil the obligations provided for in this decree with the human, financial and instrumental resources available at legislation in force.

This Decree, bearing the seal of the State, shall be entered in the Official Compendium of Legislative Acts of the Italian Republic. It is incumbent on all persons to observe it and have it observed.


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

(a) Peculiarities differentiated by PIF offences (Typologies of EU frauds)

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

National level: *Catalogo dei reati* (Catalogues of offences) by concrete offence.

EU-level: PIF Reports, Rule of law Report, “Impact of Organised Crime on the EU’s Financial Interests”⁸⁰

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

(b) Fraud

(aa) Revenue frauds

32 Revenue frauds are manifold but relate mainly to **non-VAT frauds**, such as customs duties frauds, etc. First, the scheme should be identified by investigators. For this, it is worthwhile to compare the suspected behaviour with known behaviour patterns. From a legal as well as a police point of view, the overview of crime patterns is useful. Assessment can also be based on known cases and the professional groups suspected in these cases.

⁷⁹ **Art. 6. Clausola di invarianza finanziaria**

1. Dall’esecuzione del presente decreto non devono derivare nuovi o maggiori oneri a carico della finanza pubblica.
2. Le Amministrazioni interessate provvedono agli adempimenti previsti dal presente decreto con le risorse umane, finanziarie e strumentali disponibili a legislazione vigente.

Il presente decreto, munito del sigillo dello Stato, sarà inserito nella Raccolta ufficiale degli atti normativi della Repubblica italiana. È fatto obbligo a chiunque spetti di osservarlo e di farlo osservare.

⁸⁰ See the “Impact of Organised Crime on the EU’s Financial Interests”, 2022, [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697019/IPOL_STU\(2021\)697019_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697019/IPOL_STU(2021)697019_EN.pdf). Accessed 30 June 2025.


Case Study 1: Aggravated smuggling with e-bikes at the port of Palermo (EU incoming products) **33**

	Case Studies: Aggravated smuggling with e-bikes at the port of Palermo (EU incoming products)
<p>In February 2022 the EPPO regional office, situated in Palermo opened an investigation following a report from OLAF and the Italian national customs organization. The ADM customs officials of the Palermo Customs Office discovered and reported a fraud against the budget of the EU and the national budget of over 200,000 euros.</p> <p>Fraud typology/facts: Apparently the economic operators concealed the true origin of e-bikes, which they wanted to import into the EU in Palermo, thus via an Italian port. The true origin of the supplies was the Chinese People’s Republic. In 2018 anti-dumping duties were established in order to protect the EU operators due to steal made cheaper than the EU standard. Since this legislative change e-bikes of the same type were imported from Malaysia. Investigators suspected these supplies to be imports from China still today. The final suspicion was that Chinese e-bikes were presented as e-bikes from Malaysia, which was possible as the supplies were transhipped in Malaysia. As no anti-dumping duties for Malaysia equal to the ones for e-bikes from China existed, the operators that concealed the origin omitted paying the revenue duties to the EU budget.</p> <p>Way of information/Results: The Italian importer was reported to the European Public Prosecutor’s Office (EPPO) for aggravated smuggling.</p> <p>Methods of investigation/Evidence: An analysis of flows and data relating to Malaysian producers, which were declared as such, have allowed to ascertain its Chinese origin and the consequent evasion of anti-dumping and countervailing duties. In order to subtract the profit of the unlawful conduct from the material availability of the perpetrator of the offense, the European Delegated Prosecutor of Palermo issued a seizure decree which was carried out by ADM officials at the banking institutions in Sicily and Lombardy, in which the financial relationships of the legal representative of the importing company were in place.</p>	

Source: EPPO Website, Giustizia Tributaria (MEF) jurisprudence portal.

(bb) Expenditure frauds

- 34 Expenditure fraud has been studied by the Italian Senate⁸¹ and Italian academia in the past decade.⁸² The Italian Ministry of Justice has made the protection of the EU budget a major task in the new legislative period.⁸³
- 35 The *Guardia di Finanza* operating for 248 years in 2022 released a report at the end of June 2022 that stated that expenditure frauds since the 1st January until 31st May 2022 increased.
- 36 An indication of fraud or other offences from the point of view of administrative authorities might be that not all requirements of Art. 67 of the anti-mafia code (Legislative Decree) no 159/2011 can be presented. Art. 67 para 1g) of this Code asks for special requirements, which if they do not exist in the recipient or beneficiary can lead to a suspicion.
- 37 *Case Study 2: Procurement frauds and fraud with structural funds*

	Procurement frauds and fraud with structural funds
<p>In this period of time “1.4 billion [€ of damage to the state coffers] refer to irregularities found in the procurement sector (of which almost 360 million in healthcare). Fraud involving the health system, on the other hand, amounts to 549 million, and is included in the 3.5 billion in damages to the Treasury, while those relating to social security and welfare expenditure to 365 million and those to the EU structural funds to 129 million. Over 290 they are the millions of euros of non-repayable contributions and bank loans backed by guarantees that were illegally received and which led to the denunciation of 2,400 people, at the end of 12,700 checks. On the citizenship subsidy, however, offenses of 288 million were discovered”.⁸⁴</p>	

⁸¹ Senato della Repubblica (n.d.).

⁸² Il ruolo della cooperazione transnazionale di polizia in europa nel settore della tutela degli interessi economico-finanziari dell’unione. Punto di situazione e possibili dinamiche evolutive, anche alla luce dell’istituzione dell’european public prosecutor office, Quaderno della Rivista Trimestrale della Scuola di Perfezionamento per le Forze di Polizia, online: <https://scuolainterforze.interno.gov.it/wp-content/uploads/2022/01/Quaderno-2-2021.pdf>. Accessed 30 June 2025.

⁸³ See <https://scuolainterforze.interno.gov.it/wp-content/uploads/2022/01/Quaderno-2-2021.pdf>. Accessed 30 June 2025.

⁸⁴ See il Fatto Quotidiano, 22 June 2022, online: <https://www.ilfattoquotidiano.it/2022/06/22/gdf-sei-miliardi-sottratti-alla-spesa-pubblica-con-frodi-e-sprechi-tra-il-2021-e-il-2022-negli-appalti-irregolarita-per-14-miliardi/6635882/>: “Di questa somma, 1,4 miliardi si riferiscono alle irregolarità riscontrate nel settore degli appalti (di cui quasi 360 milioni nella sanità). Le frodi al sistema sanitario ammontano invece a 549 milioni, e sono ricomprese nei 3,5 miliardi di danni all’Erario, mentre quelle in materia di spesa previdenziale e assistenziale a 365 milioni e quelle ai fondi strutturali Ue a 129 milioni. Oltre 290 sono i milioni di euro di contributi a fondo perduto e i finanziamenti bancari assistiti da garanzia che sono stati percepiti illecitamente e che hanno portato

(c) Corruption offences

The system to **combat corruption** in Italy is manifold. Legislative changes have been imminent to the strategy in Italy at least since 2012 and the **definitions for corruption** in the administrative sector compared to the criminal code are not the same.⁸⁵ The latest plan aims at preventing corruption until 2025.⁸⁶ **38**

A special study conducted on the liability of political decision makers in Italy focused on offences by virtue of Art. 323 CC.⁸⁷ It is therefore worth noting that potential perpetrators can as well be in **political positions**. A recent case of the EPPO in Croatia revealed this fact. Mayors, the democratic personnel at the lowest level are often obliged to fulfil various tasks in the area of disbursement, funding and tendering. **39**

(d) Money laundering with PIF crimes

A good source to determine the risk of AML with money from PIF offences is the “National analysis of money laundering and terrorist financing risks prepared by the Financial Security Committee”.⁸⁸ **40**

The Bank of Italy issues so-called “**Suspicious Transaction Reports**” that can stipulate a source for suspicious conduct by virtue of Art. 22 EPPO Regulation and Art. 4 PIF Directive.⁸⁹ **41**

The Italian Ministry of Justice has once set-up a study group to identify the patterns in the AML area.⁹⁰ **42**

Italian academia analyses **money laundering patterns with EU money** that is achieved to the detriment of the EU budget in general.⁹¹ **43**

alla denuncia di 2.400 persone, al termine di 12.700 verifiche. Sul reddito di cittadinanza, invece, sono stati scoperti illeciti per 288 milioni.”; See as well the original press release 248° Anniversario Della Fondazione Della Guardia Di Finanza: Bilancio Operativo Dal 1° Gennaio 2021 Al 31 Maggio 2022, online: <https://www.gdf.gov.it/eventi/anno-2022-1/248deg-anniversario-della-fondazione-della-guardia-di-finanza/comunicati-stampa/bilancio-operativo-dal-1deg-gennaio-2021-al-31-maggio-2022>. Accessed 30 June 2025.

⁸⁵ See See Carloni and Paoletti 2019, pp. 29–43.

⁸⁶ See https://www.comune.borgo-valsugana.tn.it/sites/default/files/Atti/All._A_Aggiornamento_PTPCT_2022_2024.pdf. Accessed 30 June 2025.

⁸⁷ Ivone and Reccia 2017, p. 141 (145 et seq.).

⁸⁸ Analisi nazionale dei rischi di riciclaggio di denaro e di finanziamento del terrorismo elaborata dal Comitato di sicurezza finanziaria”, online: https://www.dt.mef.gov.it/export/sites/sitodt/modules/documenti_it/prevenzione_reati_finanziari/prevenzione_reati_finanziari/Analisi_dei_rischi_di_riciclaggio_e_di_finanziamento_del_terrorismo_2018_-_Sintesi.pdf. Accessed 30 June 2025.

⁸⁹ See Bank of Italy (n.d.).

⁹⁰ See Reports: e.g. Commissione Greco 2013.

⁹¹ See Martocchia 2017.

- 44 Money laundering derived with money from PIF offences may concern every area – from maritime fishing⁹², from the banking sector, construction area to the gastronomic sector.
- (e) **Embezzlement**
- 45 The **Italian Resilience plan** has stipulated several studies on how to combat and stop embezzlement of EU money.⁹³
- (f) **Criminal organisation (PIF “Mafia clause”)**
- 46 Many studies analyse the connection of criminal organizations, like the mafia with EU money in Italy.⁹⁴
- (3) **Special national databases for PIF offences / Digital investigations, Art. 40 para 3 IRP 2020.003**
- 47 Italy has a special data base for PIF offences, which is administered by the Ministry of Justice and includes references to the area of anti-mafia offences.
- (4) **Specific legislation & Judgments for sufficient factual indications for the PIF offences in Italian criminal (procedure) law – overview**
- (a) **Fraud-related peculiarities**
- 48 There are no further fraud-related peculiarities. Instead it should be mentioned that the specialisation between Art. 316-bis, Art. 640 and Art. 640-bis c.p. is highly divergent. The authorities must clearly differentiate between these offences.
- (b) **Examples and precedents**
- (aa) **In national case-law and reports by OLAF & EPPO**
- 49 There are different types of fraud against the EU budget. A basic distinction must be made between fraud on the revenue side and fraud on the expenditure side. This separation applies not only to investigations by the delegated public prosecutors, but also to OLAF investigators and national authorities in administrative procedures (especially on the expenditure side, for example in the case of subsidies). The first EPPO crime report therefore correctly distinguishes between: All information on the next pages, which is not stemming from Judgments, is taken from the **EPPO’s annual (crime) reports** (published annually since March 2021 on the 1st of March) and serves as a basis for explaining the initial suspicion scenarios in this area. Reference can be made to national case law. Non-procurement **expenditure** fraud (31.8% 2021) (Examples: the wide field of

⁹² See http://agentimarittimi.ra.it/upload/pdf/federagenti/all_064.pdf. Accessed 30 June 2025.

⁹³ See Di Gaspare 2021.

⁹⁴ See Dalla Chiesa 2017.

cohesion funds under the MFR⁹⁵, wrongful retention of these funds, mostly agricultural subsidies⁹⁶ - non-cultivation of fields⁹⁷, wrong sheep, cows, goats, etc., recently Covid-19 related recovery funds)

➤ Procurement **expenditure** fraud (11.2% 2021)⁹⁸

⁹⁵ See in Italy especially Art. 316-bis c.p. eg Cassazione penale, Sez. VI, sentenza n. 10149 del 26 settembre 2000; Cassazione penale, Sez. VI, sentenza n. 29541 del 24 luglio 2001; Cassazione penale Sez. VI sentenza n. 22119 del 15 aprile 2021; See Deutsche Welle 2020; See Europol 2022: “The case was brought to Eurojust by the Romanian authorities in 2019. The five Italian citizens allegedly set up shell companies in Romania to illegally obtain EU funds from the Romanian Agency for Payments and Intervention for Agriculture (APIA) for planting and selling tomatoes in the 2017 campaign. They drafted and submitted documents with false information on seed purchases and on tomato sales. According to the investigations, the EU funds were never used to plant and sell tomatoes in Romania. The fraudsters transferred the money to several bank accounts and eventually withdrew it as cash from ATMs located in Italy (mainly in Nicosia, in the province of Enna). The five Italian citizens appear to have committed multiple frauds in the agricultural sector in different countries since 2015. The frauds have generated approximately EUR 21 million, which has since been reinvested by the Italian citizens in Romania and elsewhere. The five suspects and the companies they set up in Romania were indicted in 2021. They now face trial in Romania on charges of fraud against the financial interests of the European Union and forming an organised criminal group. The same accused persons have been charged by the Public Prosecutor’s Office of Enna for self money laundering and will face the court in Italy for this accusation in October 2022.” (see as well Wahl 2022, reporting on the same case);

See Press release EPPO 2022c: “Between 2018 and 2021, 15 Sardinian agricultural companies applied for, and obtained, contributions from the European Agricultural Fund for Rural Development (EAFRD). Funding was provided to support the installation of dry-stone in wire mesh closures. It is alleged, however, that the companies involved did not actually carry out the works by using companies specialised in the sector, but instead assigned the contracts to each other. Hence, the different companies became both clients and suppliers of the works and issued invoices and payments of invoices for works that were never carried out. With this scheme, it is believed that the suspects fraudulently obtained contributions of over € 2 million.”

See Press release EPPO 2022b: “The two suspects are alleged to have falsified statements and declared ownership and possession of lands in the province of Reggio Calabria, to obtain European Union agricultural funds. As the suspects were not the actual owners of the land, they committed aggravated fraud and managed to obtain over €160 000 in EU agricultural funds between 2013 and 2021.”

⁹⁶ Art. 316-ter c.p. has been cited for these cases in the past, cf. (Cassazione penale, Sez. VI, sentenza n. 32730 del 27 luglio 2016): „It integrates the crime of undue receipt of funds to the detriment of the State, provided for by Art. 316-ter cod. criminal code, and that of community fraud pursuant to Art. 2 L. December 23, 1986 n. 898, the conduct of the subject who obtains an agricultural contribution by failing to inform the granting body that he has been subjected to anti-mafia prevention measures as a result of an irrevocable decree, even if its effectiveness has now ceased.“ See as well Cassazione penale, Sez. VI, sentenza n. 31737 del 29 luglio 2008. All in all judgements on Art. 316-ter seem to point at the fact that Art. 316-ter c.p. is different to committing aggravated fraud under Art. 640, 640bis c.p.

⁹⁷ See Forde 2022.

⁹⁸ Embezzlement

Art. 316 bis Codice Penale

Criminal Cassation, Section VI, sentence no. 42924 of 28 September 2018 (embezzlement to the detriment of the State; protection of correct management and use of public resources)

Criminal Cassation, Section VI, sentence no. 40830 of November 18, 2010 (embezzlement is an instant crime, not a permanent crime)

Criminal Cassation, Section VI, sentence no. 20847 of June 3, 2010 (offended person is always the public entity (the State, EU or a public body)

Criminal Cassation, Section II, sentence no. 39644 of 11 October 2004 (Art. 316 bis is subsidiary with respect to Art. 640 bis)

Aggravated fraud for obtaining public funds

Art. 640 bis Codice Penale:

(Promotion of infrastructure projects with a high risk of fraud and embezzlement, misappropriation, affects the construction industry, waste management and the development of programs for further education and training of employees in companies)

- 50** ➤ VAT **revenue** fraud (17.6% 2021)
(cum-ex-fraud schemes [carousels], missing trader structures, organized crime in areas covered by VAT, which may include clothing, cars, electronics and merchandise, diesel fuel; this form is often associated with AML offenses.⁹⁹)
- 51** ➤ Non-VAT **revenue** fraud (13.4% 2021)
(This includes customs fraud at the external borders of the EU, affecting various entrepreneurs from countries around the world who export to the EU)
- 52** Concealing the origin of goods in order to avoid anti-dumping duties to protect the domestic economy (anti-dumping and normal customs fraud¹⁰⁰ with goods such as stainless steel, tobacco products¹⁰¹, electronics, bicycles; this range of products seems to depend on what is and is currently in particular demand in the EU and on the market may shift to other products over the course of the Green Deal).
- 53** And outside of this structure are the

Criminal Cassation, Section VI, sentence no. 12278 of January 15, 2020 (completion of the offence)

Criminal Cassation, Section II, sentence no. 53650 of December 16, 2016 (determination of the unlawfulness of the entire paid contribution)

Criminal Cassation, Section II, sentence no. 4416 of 30 January 2015 (constitution of “others”; the same entity cannot be “others”)

Money Laundering

Art. 648 bis Codice Penale:

Criminal Cassation, Section II, sentence no. 23679 of 14 July 2020 (committing the offence abroad)

Criminal Cassation, Section II, sentence no. 21687 of May 17, 2019 (withdrawal of money from a bank account)

Criminal Cassation, Section II, sentence no. 46754 of October 15, 2018 (concealing goods of stealth origin among various household goods).

⁹⁹ National example Eurojust 2022; OLAF 2022b.

¹⁰⁰ See e.g. <https://www.eppo.europa.eu/en/news/eu200-000-seized-customs-fraud-italy> and see <https://www.eppo.europa.eu/en/news/over-eu-2-million-seized-italy-aggravated-smuggling-case-e-bikes>; OLAF 2022b.

¹⁰¹ See OLAF 2022a: “The tip-off to the Italian authorities came after OLAF investigators analysing large shipments of water pipe tobacco uncovered two consignments that they considered to be at very high risk of being smuggled into Italy. The consignments were about to be shipped from the United Arab Emirates to Morocco via the Italian port of Salerno. OLAF passed on this information to the Guardia di Finanza and asked it to closely monitor the shipments in question. The Guardia di Finanza in Salerno, under the supervision of the local Prosecutor’s Office, decided to open a criminal investigation. Following their investigation, on 5 May 2020 more than 250 Guardia di Finanza officers from Salerno, assisted by 17 customs officers, moved against 69 people they considered to be involved in a variety of criminal activities in the port. Of these, some 39 were arrested, including officials, customs brokers or company employees. A further 30 people have either had their movements restricted or been temporarily suspended from their official or professional duties. They have been charged with a variety of crimes including corruption, embezzlement, illegal access to databases, receiving stolen goods, smuggling and international traffic of waste.” See as well Beslija 2021 and see Bernardi et al. 2022, pp. 344 et seq. See OLAF 2022c.

➤ Corruption cases¹⁰² (4% in 2021).

(bb) In the case law of ECtHR and ECJ

Italy has a fundamental problem with trials and investigations that take too long. This problem has been addressed by Marta Cartabia and *Mario Draghi* in 2021 and 2022 (Italian justice reform – d.lgs. n. 150/2022) until the government had no majority in July 2022 and *Sergio Matarella* needed to grant the opportunity of new elections in the fall of 2022.¹⁰³ **54**

Major Judgments from the last decade that relate to the statute of limitations (one reason of trials and investigations that take too long or even never initiated investigations) are the *Taricco* Judgments: **55**

Taricco Judgments: ECJ, C-105/14, ECJ, C-42/17 - M.A.S. and M.B., ECLI:EU: C:2017:936.¹⁰⁴ **56**

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

If he/she decides to initiate an investigation he/she **must note this in the case management system (Art. 45 para 1 EPPO Regulation, 38 IRP¹⁰⁵)**. In addition, the numerous obligations to provide information from Art. 24 para 3 to 8. **57**

¹⁰² See e.g. a big case from 2012, *Waterfield and Squires* 2012; BBC 2012: “Tax police in Italy have said European Union funds to develop the tourist sector were instead spent on restoring villas and lavish weddings. Police say they are investigating 63 people, nearly all of them from the town of Vibo Valentia, south of Naples. Bank accounts, cars and properties worth more than 1m euros (\$1.31m; £820,000) were seized.”

For Art. 318 c.p.: Cassazione penale, Sez. VI, sentenza n. 11737 del 24 agosto 1990 [all’ accertamento di illeciti fiscali/officer of the Guardia di Finanza discovering tax offences]; Cassazione penale, Sez. VI, sentenza n. 277 del 27 marzo 1993; Cassazione penale, Sez. VI, sentenza n. 2376 del 22 agosto 1994 [concut severeness, damaging the telos of the position and the office as well as position as a public official constitutes the crime]; Cassazione penale, Sez. VI, sentenza n. 5312 del 28 maggio 1996 [two-folded crime].

Art. 319 c.p.: has a special relevance to pharmaceutical agents and entrepreneurs. A Judgment from 2004 involving a carabinieri is of interest here, see Cassazione penale, Sez. VI, sentenza n. 23804 del 24 maggio 2004. To the foundations of this offence see eg Cassazione penale, Sez. VI, sentenza n. 7259 del 24 maggio 1990.

Art. 319-quater, par. 2 see eg Cassazione penale, Sez. VI, sentenza n. 44596 del 31 ottobre 2019 differentiating between fraud and undue induction of the Italian Civil Code; Cassazione penale, Sez. VI, sentenza n. 53436 del 16 dicembre 2016 and 322-bis c.p. [Embezzlement, extortion, undue inducement to give or promise benefits, bribery and incitement to bribery of members of international courts or bodies of the European Communities or of international parliamentary assemblies or international organizations and officials of the European Communities and foreign states] See Cassazione penale, Sez. VI, sentenza n. 49532 del 23 dicembre 2009; Cassazione penale, Sez. VI, sentenza n. 9106 del 25 febbraio 2013; Cassazione penale, Sez. II, sentenza n. 26969 del 18 giugno 2019. Art. 323: Cassazione penale, Sez. VI, sentenza n. 19519 del 4 maggio 2018: Case in point in which the mayor of a municipality had ordered the revocation of the managerial position held by an employee nominated on an opposing list; Cassazione penale, Sez. VI, sentenza n. 49538 del 22 novembre 2016; Cassazione penale, Sez. III, sentenza n. 35577 del 6 aprile 2016.

¹⁰³ Palermo 2022.

¹⁰⁴ See Amalfitano and Pollicino 2018.

¹⁰⁵ See <https://www.eppo.europa.eu/sites/default/files/2020-12/2020.003%20IRP%20-%20final.pdf>. Accessed 30 June 2025.

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

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

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) the amount and nature of the estimated damage; the Member State(s) where the focus of the criminal activity is, respectively where the bulk of the offenses, if several, was committed;

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

e) other Member States that may be involved;

f) the names of the potential suspects and any other involved persons in line with Article 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; [...]” [see again last footnote]

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

- 59 According to the Internal Rules of Procedure it becomes clear that during investigations, the handling EDP must **maintain an electronic case file** in the Case Management System (Art. 43 para 3), ensure access to non-digital evidence for the supervising European Prosecutor and Permanent Chamber (Art. 43 para 4), draw up **and update a progress report** with developments and **investigative steps** (Art. 44 para 1), store this report in the CMS to trigger notifications (Art. 44 para 2), provide information on request to the supervising European Prosecutor or **Permanent Chamber** (Art. 45 para 3), comply with instructions and report on their execution when required (Art. 46 paras 1–2), request review of instructions conflicting with Union or national law (Art. 47 paras 1–2), submit written observations during internal review procedures (Art. 48 para 2), respond to proposals for reallocation of the case to another EDP (Art. 49), participate in reallocation decisions across Member States including submitting observations (Art. 50 paras 1–2), propose or respond to case merging or splitting and indicate a preferred EDP assignment (Art. 51 paras 1, 5), assign measures to assisting EDPs in other Member States with necessary details and deadlines (Art. 53 paras 1–2), resolve delays in execution

with the assisting EDP (Art. 53 para 3), and request financial support for exceptionally costly investigative measures with justification (Art. 54 paras 1–2).

Art. 14 of the **Italian EPPO Adoption Law** applies in addition.

60

4. When the European Public Prosecutor's office announces that it does not intend to exercise its competence and, in any case, *after thirty days from the annotation referred to in paragraph 3, the public prosecutor immediately proceeds with the obligations provided for by Article 335, paragraph 1, of the Code of criminal Procedure.*

5. The public prosecutor informs the European Public Prosecutor's office of the registration of the procedure and the start of the preliminary investigations pursuant to paragraph 2.

The EDP needs to enter the decision into the Italian criminal records system pursuant to Art. 335 para 1 CPC.

61

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

62

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

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

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

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

a) As regards **suspected or accused persons** in the criminal proceedings of the EPPO or persons convicted following the criminal proceedings of the EPPO,

i. surname, maiden name, given names and any alias or assumed names;

ii. date and place of birth;

iii. nationality;

iv. sex;

v. place of residence, profession and whereabouts of the person concerned,

vi. social security numbers, ID-codes, driving licences, identification documents, passport data, customs and tax identification numbers;

vii. description of the alleged offences, including the date on which they were committed;

viii. category of the offences, including the existence of inextricably linked offences;

ix. the amount of the estimated damages;

x. suspected membership of a criminal organisation;

xi. details of accounts held with banks and other financial institutions;

xii. telephone numbers, SIM-card numbers, email addresses, IP addresses, and account and user names used on line platforms;

xiii. vehicle registration data;

xiv. identifiable assets owned or utilised by the person, such as crypto-assets and real estate.

xv. information whether potential privileges or immunities may apply as regards natural **persons who reported or are victims of offences** that fall within the competence of the EPPO,

i. surname, maiden name, given names and any alias or assumed names;

ii. date and place of birth;

iii. nationality;

iv. sex;

v. place of residence, profession and whereabouts of the person concerned;

vi. ID-codes, identification documents, and passport data;

vii. description and nature of the offences involving or reported by the person concerned, the date on which the offences were committed and the criminal category of the offences.

c) as regards **contacts or associates of one of the persons referred to in point (a)** above,

i. surname, maiden name, given names and any alias or assumed names;

ii. date and place of birth;

iii. nationality;

iv. sex;

v. place of residence, profession and whereabouts of the person concerned;

vi. ID-codes, identification documents, and passport data. The categories of personal data referred to above under points (a) (x) - (xv) shall be entered in the Index only to the extent practicable, taking into account the operational interest and available resources. The reference in the Index shall be maintained up to date during the investigation of a case file. The Case Management System shall periodically notify the European Delegated Prosecutor if certain categories of information are not entered in the Index.

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

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

If the office decides **not open a case**, it must report acc. to **Art. 24 para 8 EPPO Reg.** to all prosecutor's offices.¹⁰⁶

63

d) Justiciability and appeals (Defence perspective)

For the defence it might be important to already “identify procedural questions and problems” and “control” the start of investigations and protect the individual rights of any suspect – not only in the stage of appeal exercising the right to appeal¹⁰⁷. In any case it is important that the defence lawyers even acquire knowledge of cases – at least in the cases, in which the law prescribes defence (see below Agreement between the National Bar Council and the EPPO). If persons are arrested immediately, Art. 390 CPC applies.

64

Article 390 CPC¹⁰⁸ Request for validation of arrest or detention

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1. Within forty-eight hours of arrest or detention, the public prosecutor, if he does not have to order the immediate release of the arrested or detained person, requests validation from the competent preliminary investigation judge in relation to the place where the arrest or detention was performed.
2. The judge sets the validation hearing as soon as possible and in any case within the following forty-eight hours, notifying the public prosecutor and the defender without delay.
3. The arrest or detention becomes ineffective if the public prosecutor does not observe the prescriptions of paragraph 1.
- 3-bis. If he does not consider appearing, the public prosecutor transmits to the judge, for the validation hearing, the requests regarding personal freedom with the elements on which they are based.

¹⁰⁶ See IV.) Italian Notification.

¹⁰⁷ See Lasagni and Mirandola 2023, pp. 275–305 (280) saying the defendant can appeal against convictions and acquittals and pp. 275–280 presenting the history of a right to appeal based on Art. 24 of the Constitution and p. 285 that the scope of review encompasses almost like in Germany facts and law (limited by the grounds of appeal, „tantum devolutum quantum appellatum“) equal to „Berufung“ and p. 291 et seq. the role and scope of review of the Supreme Court almost equal to the BGH only deciding on issues of law (p. 295) e.g. imagining it in the context of this compendium question of PIF Acquis conduct and typical Italian PIF Acquis offences. We assume by hypothesis that it is therefore not the ECJ shaping a harmonized PIF *Acquis* law area as it is not equal to appeal courts deciding only on issues of national or transposed EU law, even if needs to be heard under Art. 267 TFEU – *de facto* the national appeal or Supreme courts shape the clarity of this EU law area (the EU's position on the harmonized offences appealed by the EPPO's EDPs and its legal bureau, independent from the view of the Commission while executing its cases). And on p. 295 et seq. see both authors emphasizing the *revisione europea*, which is despite a special provision to reopen a trial if a proceeding was in violation of the ECHR, in case the defendant appeals with it to give effect to a decision of the ECtHR aimed at ensuring the fairness of proceedings.

¹⁰⁸ **Art. 390. Richiesta di convalida dell'arresto o del fermo.**

1. Entro quarantotto ore dall'arresto o dal fermo il pubblico ministero, qualora non debba ordinare la immediata liberazione dell'arrestato o del fermato, richiede la convalida al giudice per le indagini preliminari competente in relazione al luogo dove l'arresto o il fermo è stato eseguito.
2. Il giudice fissa l'udienza di convalida al più presto e comunque entro le quarantotto ore successive dandone avviso, senza ritardo, al pubblico ministero e al difensore.
3. L'arresto o il fermo diviene inefficace se il pubblico ministero non osserva le prescrizioni del comma 1.
- 3-bis. Se non ritiene di comparire, il pubblico ministero trasmette al giudice, per l'udienza di convalida, le richieste in ordine alla libertà personale con gli elementi su cui le stesse si fondano.

Article 391 CPC Validation hearing

1. The validation hearing shall be held in chambers with the mandatory participation [of the Public Prosecutor and] of the counsel for the arrested or detained person. Where the arrested person, the detained person or their counsel so request, the judge may authorise them to participate remotely.¹⁰⁹
2. If the trusted lawyer or public defender has not been found or has not appeared, the judge shall proceed in accordance with article 97 paragraph 4. The judge also, even ex officio, verifies that the arrested or detained person has been given the communication referred to in article 386, paragraph 1, or that in any case has been informed pursuant to paragraph 1-bis of the same article, and provides, if necessary, to give or complete the communication or information indicated therein.
3. The public prosecutor, if appeared, indicates the reasons for the arrest or detention and explains the requests regarding personal freedom. The judge then proceeds to interrogate the person arrested or detained, unless the latter has been unable or refused to appear; in any case he hears his defender.
4. When it appears that the arrest or detention has been legitimately carried out and the terms provided for in articles 386 paragraph 3 and 390 paragraph 1 have been observed, the judge validates it by order. Against the order that decides on validation, the public prosecutor and the arrested or detained person can appeal to cassation.

¹⁰⁹ **Art. 391. Udiienza di convalida.**

1. L'udienza di convalida si svolge in camera di consiglio con la partecipazione necessaria [del pubblico ministero e] del difensore dell'arrestato o del fermato. Quando l'arrestato, il fermato o il difensore ne fanno richiesta il giudice può autorizzarli a partecipare a distanza
2. Se il difensore di fiducia o di ufficio non è stato reperito o non è comparso, il giudice provvede a norma dell'articolo 97 comma 4. Il giudice altresì, anche d'ufficio, verifica che all'arrestato o al fermato sia stata data la comunicazione di cui all'articolo 386, comma 1, o che comunque sia stato informato ai sensi del comma 1-bis dello stesso articolo, e provvede, se del caso, a dare o a completare la comunicazione o l'informazione ivi indicate.
3. Il pubblico ministero, se comparso, indica i motivi dell'arresto o del fermo e illustra le richieste in ordine alla libertà personale. Il giudice procede quindi all'interrogatorio dell'arrestato o del fermato, salvo che questi non abbia potuto o si sia rifiutato di comparire; sente in ogni caso il suo difensore.
4. Quando risulta che l'arresto o il fermo è stato legittimamente eseguito e sono stati osservati i termini previsti dagli articoli 386 comma 3 e 390 comma 1, il giudice provvede alla convalida con ordinanza. Contro l'ordinanza che decide sulla convalida, il pubblico ministero e l'arrestato o il fermato possono proporre ricorso per cassazione.
5. Se ricorrono le condizioni di applicabilità previste dall'articolo 273 e taluna delle esigenze cautelari previste dall'articolo 274, il giudice dispone l'applicazione di una misura coercitiva a norma dell'articolo 291. Quando l'arresto è stato eseguito per uno dei delitti indicati nell'articolo 381, comma 2, ovvero per uno dei delitti per i quali è consentito anche fuori dai casi di flagranza, l'applicazione della misura è disposta anche al di fuori dei limiti di pena previsti dagli articoli 274, comma 1, lettera c), e 280.
6. Quando non provvede a norma del comma 5, il giudice dispone con ordinanza la immediata liberazione dell'arrestato o del fermato.
7. Le ordinanze previste dai commi precedenti, se non sono pronunciate in udienza, sono comunicate o notificate a coloro che hanno diritto di proporre impugnazione. Le ordinanze pronunciate in udienza sono comunicate al pubblico ministero e notificate all'arrestato o al fermato, se non comparsi. I termini per l'impugnazione decorrono dalla lettura del provvedimento in udienza ovvero dalla sua comunicazione o notificazione. L'arresto o il fermo cessa di avere efficacia se l'ordinanza di convalida non è pronunciata o depositata anche quarantotto ore successive al momento in cui l'arrestato o il fermato è stato posto a disposizione del giudice.

5. If the conditions of applicability provided for in Article 273 and any of the precautionary requirements provided for in Article 274 are met, the judge orders the application of a coercive measure pursuant to Article 291. When the arrest was carried out for one of the crimes indicated in article 381, paragraph 2, or for one of the crimes for which it is also permitted outside the cases of in flagrante delicto, the application of the measure is also ordered outside the penalty limits provided for by articles 274, paragraph 1, letter c), and 280.

6. When he fails to do so in accordance with paragraph 5, the judge orders the immediate release of the person arrested or detained.

7. The orders provided for in the preceding paragraphs, if they are not pronounced at the hearing, are communicated or notified to those who have the right to appeal. The orders pronounced at the hearing are communicated to the public prosecutor and notified to the arrested or detained person, if they have not appeared. The terms for the appeal run from the reading of the provision at the hearing or from its communication or notification. The arrest or detention ceases to have effect if the order of validation is not pronounced or deposited within forty-eight hours after the moment in which the arrested or detained person has been placed at the disposal of the judge.

Concerning crime reports and Art. 335 CPP, see “Protocol of Understanding Between the National Forensic Council and the EPPO – Decentralized Offices in Italy” **66**

PROTOCOL OF UNDERSTANDING

BETWEEN THE NATIONAL FORENSIC COUNCIL AND THE EUROPEAN PROSECUTOR’S OFFICE - DECENTRALIZED OFFICES IN ITALY¹¹⁰

The National Bar Council (hereinafter CNF), with registered office in Rome, at via Arenula n. 70, at the Ministry of Justice and administrative headquarters in Rome, at via del Governo Vecchio n. 3, in the person of the Acting President, Avvocato Maria Masi and the European Public Prosecutor’s Office (hereinafter EPPO), based in Luxembourg, in the person of the European National Coordinator Prosecutor, Dr. Stefano Castellani, hereinafter also referred to as “the Parties”.¹¹¹

WHEREAS

- that the European Public Prosecutor’s Office started its activity from 10 June 2021 and has a head office in Luxembourg and no. 22 (twenty-two) decentralized offices in

¹¹⁰ PROTOCOLLO DI INTESA TRA IL CONSIGLIO NAZIONALE FORENSE E LA PROCURA EUROPEA — UFFICI DECENTRALIZZATI IN ITALIA.

¹¹¹ Il **Consiglio Nazionale Forense** (di seguito **CNF**), con sede legale in Roma, alla via Arenula n. 70, presso il Ministero della Giustizia e sede amministrativa in Roma, alla via del Governo Vecchio n. 3, in persona del Presidente f.f., Avvocato Maria Masi e l’**European Public Prosecutor’s Office** (di seguito **EPPO**), con sede in Lussemburgo, in persona del Procuratore europeo coordinatore nazionale, Dott. Stefano Castellani, di seguito anche indicati come “le Parti”.

the individual Member States that have joined this form of enhanced judicial cooperation;

- that the decentralized offices are constituted by the European Delegated Prosecutors who carry out investigative activities in their respective Member States, applying the procedural and substantive laws of the home State;

- that, at present, in Italy, the European Delegated Prosecutors are 20 (twenty), divided into n. 9 (nine) offices on the Italian territory: Turin (staff: 2 magistrates), Milan (staff 3 magistrates), Venice (staff 2 magistrates), Bologna (staff 2 magistrates), Rome (staff 5 magistrates), Naples (staff 3 magistrates), Bari (2 magistrates staff), Catanzaro (2 magistrates staff), Palermo (2 magistrates);¹¹²

- which, at present, have been appointed n. 15 (fifteen) European Delegated Prosecutors out of the 20 (twenty) planned in the workforce, so that the offices of Bari and Catanzaro have not yet been covered and a post in Bologna has remained uncovered¹¹³

CONSIDERED

- that the European Public Prosecutor has competence, pursuant to Art. 22 of the EU Regulation 1937/2017, on crimes affecting the financial interests of the European Union, as foreseen by the PIF Directive n. 1371/2017;

- that the European Delegated Prosecutors (PED) have the same prerogatives and perform the same functions as the National Deputy Prosecutors in relation to the offenses under their competence and that their competence, despite the distribution in nine different offices, is of a national nature;

- that the territorial jurisdiction on the judicial side (both in the investigation phase and in the trial phase) is subject to the ordinary, substantive and procedural rules established by the Italian legal system;

- that the Ministry of Justice has made available to the European Public Prosecutor's Office, with a specific Ministerial Decree, the IT register SICP, the same register in use at the national prosecutor's offices;

¹¹² - che la Procura Europea ha iniziato la sua attività a partire dal 1^o giugno 2021 ed ha una sede centrale in Lussemburgo e n. 22 (ventidue) sedi decentralizzate presso i singoli Stati membri che hanno aderito a questa forma di cooperazione giudiziaria rafforzata;

- che le sedi decentralizzate sono costituite dai Procuratori Europei Delegati che svolgono attività inquirente nei rispettivi Stati Membri, applicando le leggi processuali e sostanziali dello Stato di appartenenza;

- che, allo stato, in Italia, i Procuratori europei Delegati sono 20 (venti), suddivisi in n. 9 (nove) sedi sul territorio italiano: Torino (organico: 2 magistrati), Milano (organico 3 magistrati), Venezia (organico 2 magistrati), Bologna (organico 2 magistrati), Roma (organico 3 magistrati), Napoli (organico 3 magistrati), Bari (organico 2 magistrati), Catanzaro (organico 2 magistrati), Palermo (n. 2 magistrati);

¹¹³ che, allo stato, sono stati nominati n. 15 (quindici) Procuratori europei Delegati sui 20 (venti) previsti in organico, di talché non sono ancora state coperte le sedi di Bari e Catanzaro ed è rimasto scoperto un posto a Bologna.

- that the office of the European Public Prosecutor's Office has been configured, in the computer system and in line with European legislation, as a unitary national office, assimilated to a district of the Court of Appeal, able to "communicate" electronically with all the Italian judicial offices.¹¹⁴

All the foregoing and considered, which is an integral part of this Memorandum of Understanding, the Parties agree as follows.¹¹⁵

ARTICLE 1 - Object and purpose

1. With this Protocol, the Parties undertake to jointly implement synergistic actions aimed at promoting and disseminating best practices relating to the identification of the methods for regulating requests for information pursuant to Art. 335 c.p.p., formulated by the lawyers of persons who have been registered in the register of suspects of the European Public Prosecutor's Office, called SICP-EPPO.

2. The Parties undertake, in particular, to agree on common initiatives to:

- rationalize and, at the same time, speed up the procedures for submitting requests pursuant to Art. 335 c.p.p. formulated by the lawyers of persons who have been registered in the SICP-EPPO register and the sending of the corresponding certificates by the competent judicial offices;
- promote the disclosure and dissemination of the best practices set out below;
- organize joint events aimed at informing about the activities carried out by the European Public Prosecutor's Office

¹¹⁴ **Considerato**

- che la Procura Europea ha competenza, ai sensi dell'Art. 22 del Regolamento UE 1937/2017, sui reati che ledono gli interessi finanziari dell'Unione Europea, così come previsti dalla Direttiva PIF n. 1371/2017;
- che i Procuratori Europei Delegati (PED) hanno le stesse prerogative e svolgono le stesse funzioni del Sostituti Procuratori nazionali in relazione ai reati di loro competenza e che la loro competenza, nonostante la distribuzione in nove diverse sedi, è di carattere nazionale;
- che la competenza territoriale lato giudicante (sia in fase di indagine, sia in fase dibattimentale) è soggetta alle regole ordinarie, sostanziali e processuali stabilite dall'ordinamento giuridico italiano;
- che il Ministero della giustizia ha messo a disposizione della Procura Europea, con apposito Decreto Ministeriale, il registro informatico SICP, lo stesso registro in uso presso gli uffici di Procura nazionali;
- che l'ufficio della Procura europea è stato configurato, nel sistema informatico ed in coerenza con la normativa europea, come un ufficio unitario nazionale, assimilato ad un distretto di Corte di Appello, in grado di "dialogare" informaticamente con tutti gli uffici giudiziari italiani.

¹¹⁵ Tutto quanto sopra premesso e considerato, che costituisce parte integrante del presente Protocollo di intesa, le Parti convengono quanto segue.

ART. I. – Oggetto e finalità

1. Con il presente Protocollo le Parti si impegnano per la realizzazione congiunta di azioni sinergiche finalizzate alla promozione ed alla diffusione di best practices relative alla individuazione delle modalità di regolamentazione delle richieste di informazioni ex Art. 335 c.p.p., formulate dai difensori di persone che siano state iscritte nel registro degli indagati della Procura Europea, denominato SICP-EPPO.

2. Le Parti si impegnano, in particolare, a concordare iniziative comuni per:

- razionalizzare e, contestualmente, velocizzare le modalità di presentazione delle istanze ex Art. 335 c.p.p. formulate dai difensori di persone che siano state iscritte nel registro SICP-EPPO e l'invio delle corrispondenti attestazioni da parte degli uffici giudiziari competenti;
- promuovere la divulgazione e la diffusione delle best practices di seguito meglio stabilite;

and on the issues of the right to defence within the national and European constitutional framework.

ARTICLE 2 - Dissemination and identification of good practices

1. The Parties undertake to encourage the widest sharing of good practices, in use on the national territory, to promote the dissemination of positive experiences in the field of requests pursuant to Art. 335 c.p.p. formulated by the lawyers of persons who have been registered in the SICP-EPPO register and the sending of the corresponding certificates by the competent judicial offices;

2. The Parties, having acknowledged that a PEC box of the European Public Prosecutor's Office dedicated to requests pursuant to Art. 335 c.p.p.: `procuraeuropea.335@giustiziacert.it`, has been set up establish the following:

a) the defender of the party sends the requests by certified e-mail to the aforementioned mailbox;

b) the defender attaches to the request via PEC the special power of attorney for the performance of the specific act (request pursuant to Article 335 of the Criminal Procedure Code) by the client, specifying that requests without the said special power of attorney will not be taken into consideration by the judicial offices;

c) the defender receives the reply from the European Public Prosecutor's Office on the PEC, within 7 days with the result attached, signed by the official in charge of the office:

c.1 negative response certificate

or

c.2 communication of the registration, with the title of the crime, the number of the procedure, the name of the PED holder and the indication of the office;

d) the defender's requests must be sent exclusively to the address `procuraeuropea.335@giustiziacert.it`.

3. The Parties agree that the procedure described above also applies to requests aimed at knowing the state of the procedure.¹¹⁶

¹¹⁶ - organizzare eventi comuni volti ad informare delle attività svolte dalla Procura Europea e sui temi del diritto alla difesa all'interno del quadro costituzionale nazionale ed europeo.

ART. 2. – Diffusione ed individuazione di buone pratiche

Article 3 - Data and research

1. The Parties undertake to encourage discussion, taking into account the results of the application experiences, in order to achieve closer collaboration for the achievement of the objectives referred to in this Protocol.
2. For the purpose of implementing this protocol, the National Councilor for the District of Bologna, Avvocato Giovanna Ollà, is delegated for the CNF.

Article 4 - Collaboration between the Parties

1. The Parties undertake to promote collaboration for the joint implementation of continuous training programs for members of their respective professional systems, study and research meetings.
2. The Parties define, through specific agreements, the methods of collaboration or¹¹⁷ coordination of its activities with institutions, bodies, independent authorities, associations and other bodies operating within the sectors concerned.

Article 5 - Duration

1. This Protocol is valid for three years from the date of signing.

1. Le Parti si impegnano a favorire la più ampia condivisione delle buone pratiche, in uso sul territorio nazionale, per promuovere la diffusione delle esperienze positive in materia di istanze ex Art. 335 c.p.p. formulate dai difensori di persone che siano state iscritte nel registro SICP-EPPO e l'invio delle corrispondenti attestazioni da parte degli uffici giudiziari competenti;

2. Le Parti, preso atto che è stato istituito una casella PEC della Procura Europea dedicata alle richieste ex Art. 335 c.p.p.: procuraeuropea.335iustiziacert.it, stabiliscono quanto segue:

- a) il difensore della parte invia le richieste a mezzo PEC, alla predetta casella di posta;
- b) il difensore allega alla richiesta via PEC la procura speciale al compimento dello specifico atto (richiesta ex Art. 335 c.p.p.) da parte dell'assistito, precisando che le richieste prive della detta procura speciale non verranno prese in considerazione dagli uffici giudiziari;
- c) il difensore riceve sulla PEC la risposta da parte della Procura Europea, entro il termine di 7 giorni con in allegato l'esito, a firma del funzionario addetto all'ufficio:

c.1 certificato di risposta negativo

oppure

c.2 comunicazione dell'iscrizione, con il titolo di reato, il numero di procedimento, il nome del PED titolare e l'indicazione dell'ufficio;

d) le richieste del difensore vanno inviate esclusivamente all'indirizzo procuraeuropea.335@giustiziacert.it.

3. Le Parti convengono che la procedura sopra descritta si applica anche per le richieste finalizzate a conoscere lo stato del procedimento.

¹¹⁷ **ART. 3. – Dati e ricerche**

1. Le Parti si impegnano a favorire il confronto, tenuto conto dei risultati delle esperienze applicative, al fine di realizzare una più stretta collaborazione per il raggiungimento degli obiettivi di cui al presente Protocollo.

2. Al fine dell'attuazione del presente protocollo, per il CNF è delegata la Consigliera nazionale per il Distretto di Bologna, Avvocato Giovanna Ollà.

ART. 4 – Collaborazione tra le Parti

1. Le Parti si impegnano a promuovere la collaborazione per la realizzazione comune di programmi di formazione continua per gli iscritti dei rispettivi ordinamenti professionali, di incontri di studio e ricerca.

2. Le Parti definiscono, attraverso apposite intese, le modalità di collaborazione o

2. The Protocol is renewed through the adhesion of one party to the written request of the other party communicated before the expiry of the agreement.¹¹⁸

Roma,

PER LA PROCURA EUROPEA

CONSIGLIO NAZIONALE

Il Coordinatore nazionale

FORENSE

Dott. Stefano Castellani

Presidente

PEC System (Certified Email): Lawyers submit Article 335 requests exclusively via a certified PEC email to a dedicated EPPO mailbox: [procuraeuropea.335@giustizia cert.it](mailto:procuraeuropea.335@giustizia.cert.it).¹¹⁹ Each request must include a special power of attorney for the specific act; otherwise, it is not processed.

Response by EPPO: The EDP's office replies within 7 days, sending either: (a) a negative certificate (no registration) or (b) confirmation of registration (crime title, case number, EDP in charge, office). The same procedure applies for status requests on ongoing proceedings. CNF and EPPO commit to sharing best practices, organizing joint training sessions, and research or study meetings to improve defence rights and procedural efficiency.

¹¹⁸ coordinamento delle proprie attività con istituzioni, enti, autorità indipendenti, associazioni e altri organismi che operano nell'ambito dei settori interessati.

ART. 5 – Durata

1. Il presente Protocollo ha una validità di anni tre a decorrere dalla data della sottoscrizione.
2. Il Protocollo viene rinnovato tramite adesione di una parte alla richiesta scritta dell'altra parte comunicata prima della scadenza dell'accordo.

¹¹⁹ See https://procura-epo.giustizia.it/it/certificato_iscrizioni.page. Accessed 30 June 2025.

2. Article 27 Right of Evocation

2. Article 27 Right of evocation.....	131	ff. Abatement of action (dispense with prosecution)	143
a) Provisions with a precluding effect for the Right of evocation of the EPPO, para 2	134	b) Urgent measures of national authorities for securing an investigation and prosecution	143
aa. Statute of limitations (<i>prescrizione</i>).....	134	c) Competent national authorities in paras. 3 to 7 of Art. 2	155
bb. Amnesty and Pardon	137	d) Provisions regarding the finalisation of the national investigation, para 7	155
cc. Criminal complaint	140		
dd. Prosecution before the trial court	141		
ee. Opposing legal validity	141		

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

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

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

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

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

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

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

Where a European Delegated Prosecutor, who has received the information in accordance with Article 24(2), considers not to exercise the right of evocation, he/she shall inform the competent Permanent Chamber through the European Prosecutor of his/her Member State with a view to enabling the Permanent Chamber to take a decision in accordance with Article 10(4).

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

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

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

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

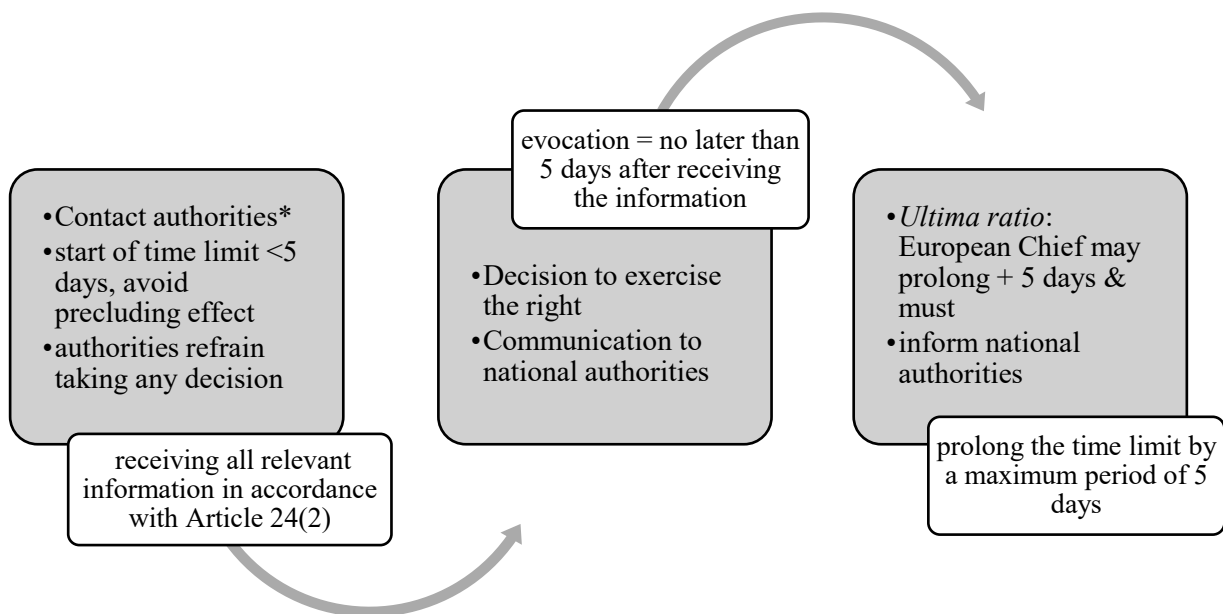
9. To ensure coherent application of the guidelines, a European Delegated Prosecutor shall inform the competent Permanent Chamber of each decision taken in accordance with paragraph 8 and each Permanent Chamber shall report annually to the College on the application of the guidelines.

- 1 The **fraud criminology and fraud patterns** that have happened in Italy in the past, are valid for Art. 27 EPPO Reg. as well. If national prosecution offices or other bodies exercise their special competence, which could fall into the “same” competence of the EPPO, they need to observe the requisites of Art. 27 EPPO Reg. in order not to tangle up the investigations of the EPPO.¹²⁰ The conflict of competences is a realistic question

¹²⁰ See Pressacco, 2022 , pp. 161–189.

and is partly answered by the Italian EPPO Adoption Act. Like in Germany, where the Highest Court (*Bundesgerichtshof*) will decide, it is the General Prosecutor at the *Corte di Cassazione*, which will decide.¹²¹

Figure 4: Right of evocation/time limits/refrain taking decisions that have a precluding effect 2



* **Italian authorities:** “In accordance with artt. 10(3)(d), 24(2)–(3), 25(1) to (5), 26(7), 27(2) to (8), 34(1) to (3)/(5) to (7) of Regulation (EU) 2017/1939 the national judicial and law enforcement authorities that are competent to initiate and conduct a criminal investigation concerning criminal offences for which the EPPO is competent are all Prosecutor’s offices and authorities with general judicial police functions according to Art. 57 of the Italian criminal procedure code, that is, mainly, State Police (*Polizia di Stato*), Carabinieri’s (*Arma dei Carabinieri*), Financial Police (*Guardia di Finanza*) and Prison Police (*Polizia Penitenziaria*). In addition, authorities to which other Italian laws confer special judicial police functions, including, for example, the Revenue Agency (*Agenzia delle Entrate*) and the Customs Agency (*Agenzia delle Dogane*)”¹²² 3

¹²¹ See Fiminani 2022.

¹²² Statement of the Italian Government to the EPPO, 2021, <https://www.epo.europa.eu/sites/default/files/2021-11/16-IT.pdf>. Accessed 30 June 2025.

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

aa. Statute of limitations (*prescrizione*)

- 4 The Italian Penal Code stipulates statutes of limitations for the criminal law offences as well as the punishment.¹²³ The Italian system was discussed broadly due to the so-called *Taricco*-Judgments in the past.

Article 157 – Prescription. Time needed to prescribe
Article 158 – Commencement of prescription period
Article 159 – Suspension of the course of prescription
Article 160 – Interruption of the course of prescription
Article 161 – Effects of suspension and interruption
Article 161 bis – Termination of the course of prescription

Article 157 CPC¹²⁴ Termination of the course of prescription

The statute of limitations extinguishes the offence after the lapse of the time corresponding to the maximum sentence established by law, and in any case a time of not less than six years in the case of a crime and four years in the case of a contravention, even if punished with a fine only.

To determine the time limit for prescription, regard shall be had to the penalty established by law for the offence committed or attempted, without taking into account the

¹²³ Orlandi 2021, pp. 263–285, here 263 et seq.

¹²⁴ **Art. 157 c.p.**

La prescrizione estingue il reato) decorso il tempo corrispondente al massimo della pena edittale stabilita dalla legge e comunque un tempo non inferiore a sei anni se si tratta di delitto e a quattro anni se si tratta di contravvenzione, ancorché puniti con la sola pena pecuniaria.

Per determinare il tempo necessario a prescrivere si ha riguardo alla pena stabilita dalla legge per il reato consumato o tentato [56], senza tener conto della diminuzione per le circostanze attenuanti e dell'aumento per le circostanze aggravanti, salvo che per le aggravanti per le quali la legge stabilisce una pena di specie diversa da quella ordinaria e per quelle ad effetto speciale, nel qual caso si tiene conto dell'aumento massimo di pena previsto per l'aggravante(3).

Non si applicano le disposizioni dell'articolo 69 e il tempo necessario a prescrivere è determinato a norma del secondo comma.

Quando per il reato la legge stabilisce congiuntamente o alternativamente la pena detentiva e la pena pecuniaria, per determinare il tempo necessario a prescrivere si ha riguardo soltanto alla pena detentiva.

Quando per il reato la legge stabilisce pene diverse da quella detentiva e da quella pecuniaria, si applica il termine di tre anni.

I termini di cui ai commi che precedono sono raddoppiati per i reati di cui agli articoli 375, terzo comma, 449 e 589, secondo e terzo comma, e 589 bis, nonché per i reati di cui all'articolo 51, commi 3-bis e 3-quater, del codice di procedura penale. I termini di cui ai commi che precedono sono altresì raddoppiati per i delitti di cui al titolo VI-bis del libro secondo, per il reato di cui all'articolo 572 e per i reati di cui alla sezione I del capo III del titolo XII del libro II e di cui agli articoli 609 bis, 609 quater, 609 quinquies e 609 octies, salvo che risulti la sussistenza delle circostanze attenuanti contemplate dal terzo comma dell'articolo 609 bis ovvero dal quarto comma dell'articolo 609 quater.

La prescrizione è sempre espressamente rinunciabile dall'imputato.

La prescrizione non estingue i reati per i quali la legge prevede la pena dell'ergastolo, anche come effetto dell'applicazione di circostanze aggravanti.

reduction for extenuating circumstances and the increase for aggravating circumstances, except for aggravating circumstances for which the law establishes a penalty of a type different from the ordinary penalty and for those with special effects, in which case the maximum increase in penalty provided for the aggravating circumstance shall be taken into account.

The provisions of Article 69 shall not apply, and the time required for prescription shall be determined in accordance with the second paragraph.

When, for the offence, the law establishes jointly or alternatively a custodial sentence and a monetary penalty, only the custodial sentence shall be taken into account in determining the time required for prescription.

When for the offence the law establishes penalties other than imprisonment and fine, the term of three years shall apply.

The terms referred to in the preceding paragraphs shall be doubled for the offences referred to in Articles 375(3), 449 and 589(2) and (3) and 589 bis, as well as for the offences referred to in Article 51(3-bis) and (3-quater) of the Code of Criminal Procedure.

The terms referred to in the preceding paragraphs shall also be doubled for the offences referred to in Title VI-bis of Book II, for the offence referred to in Article 572 and for the offences referred to in Section I of Chapter III of Title XII of Book II and referred to in Articles 609 bis, 609 quater, 609 quinquies and 609 octies, unless the extenuating circumstances referred to in the third paragraph of Article 609 bis or in the fourth paragraph of Article 609 quater apply.

The limitation period is always expressly waivable by the defendant.

The statute of limitations does not extinguish offences for which the law provides for life imprisonment, also as an effect of the application of aggravating circumstances.

Article 158¹²⁵

The limitation period runs, for a completed offence, from the day on which the offence was committed; for an attempted offence, from the day on which the activity of the offender ceased; for a permanent or continuing offence, from the day on which the permanence or continuation ceased.

¹²⁵ **Art. 158 c.p.**

Il termine della prescrizione decorre, per il reato consumato, dal giorno della consumazione; per il reato tentato, dal giorno in cui è cessata l'attività del colpevole; per il reato permanente o continuato, dal giorno in cui è cessata la permanenza o la continuazione.

Quando la legge fa dipendere la punibilità del reato dal verificarsi di una condizione, il termine della prescrizione decorre dal giorno in cui la condizione si è verificata. Nondimeno, nei reati punibili a querela, istanza o richiesta il termine della prescrizione decorre dal giorno del commesso reato.

Per i reati previsti dall'articolo 392, comma 1-bis, del Codice di procedura penale, se commessi nei confronti di minore, il termine della prescrizione decorre dal compimento del diciottesimo anno di età della persona offesa, salvo che l'azione penale sia stata esercitata precedentemente. In quest'ultimo caso il termine di prescrizione decorre dall'acquisizione della notizia di reato.

When the law makes the punishability of the offence dependent on the occurrence of a condition, the limitation period runs from the day on which the condition occurred. However, in offences punishable on complaint, application or request, the limitation period runs from the day the offence is committed.

In the case of offences provided for in Article 392(1-bis) of the Code of Criminal Procedure, if committed against a minor, the limitation period runs from the age of the offended person's 18th birthday, unless the criminal action was brought earlier. In the latter case, the limitation period starts to run from the time the offence was reported.

Article 159¹²⁶

The running of the limitation period remains suspended in any case where the suspension of the criminal proceedings or trial or of the terms of pre-trial detention [see Art. 304 Code of Criminal Procedure] is imposed by a particular provision of law, as well as in cases of

- 1) authorisation to proceed, from the date of the order in which the public prosecutor makes the request until the day on which the competent authority grants it;
- 2) referral of the matter to another court, until the day on which the matter is decided,
- 3) suspension of the criminal proceedings or trial for reasons of impediment of the parties and defence counsel or at the request of the defendant or his defence counsel. In the event of a stay of proceedings due to the impediment of the parties or defence counsel, the hearing may not be postponed beyond the sixtieth day following the foreseeable cessation of the impediment, the time of the impediment increased by sixty days being taken into account otherwise. This is without prejudice to the powers provided for in Article 71(1) and (5) of the Code of Criminal Procedure;
- 3-bis) suspension of criminal proceedings pursuant to Article 420 quater of the Code of Criminal Procedure;

¹²⁶ **Art. 159 c.p.**

Il corso della prescrizione rimane sospeso in ogni caso in cui la sospensione del procedimento o del processo penale o dei termini di custodia cautelare è imposta da una particolare disposizione di legge, oltre che nei casi di:

- 1) autorizzazione a procedere, dalla data del provvedimento con cui il pubblico ministero presenta la richiesta sino al giorno in cui l'autorità competente la accoglie;
- 2) deferimento della questione ad altro giudizio, sino al giorno in cui viene decisa la questione
- 3) sospensione del procedimento o del processo penale per ragioni di impedimento delle parti e dei difensori ovvero su richiesta dell'imputato o del suo difensore. In caso di sospensione del processo per impedimento delle parti o dei difensori, l'udienza non può essere differita oltre il sessantesimo giorno successivo alla prevedibile cessazione dell'impedimento, dovendosi avere riguardo in caso contrario al tempo dell'impedimento aumentato di sessanta giorni. Sono fatte salve le facoltà previste dall'articolo 71, commi 1 e 5, del codice di procedura penale;
- 3-bis) pronuncia della sentenza di cui all'articolo 420-quater del codice di procedura penale;
- 3-ter) rogatorie all'estero, dalla data del provvedimento che dispone una rogatoria sino al giorno in cui l'autorità richiedente riceve la documentazione richiesta, o comunque decorsi sei mesi dal provvedimento che dispone la rogatoria.

La prescrizione riprende il suo corso dal giorno in cui è cessata la causa della sospensione.

Quando è pronunciata la sentenza di cui all'articolo 420-quater del codice di procedura penale il corso della prescrizione rimane sospeso sino al momento in cui è rintracciata la persona nei cui confronti è stata pronunciata, ma in ogni caso non può essere superato il doppio dei termini di prescrizione di cui all'articolo 157.

3-ter) letters rogatory abroad, from the date of the order ordering the letters rogatory until the day on which the requesting authority receives the requested documentation, or in any case six months after the order ordering the letters rogatory.

The limitation period resumes its course from the day on which the cause of suspension ceased to exist.

When the judgment referred to in Article 420-quater of the Code of Criminal Procedure is pronounced, the running of the statute of limitations remains suspended until the person against whom it was pronounced is located; in any case, however, it may not exceed twice the limitation periods referred to in Article 157.

The **extinction of the sentence** is not presented here in full length, but only with a short overview of the structure in the Criminal Code: **5**

Article 172–176 CP [statute of limitations for sentences] **6**

Article 171 – Death of the offender after conviction

Article 172 – Extinction of imprisonment and fine by lapse of time

Article 173 – Extinction of arrest and financial penalties by lapse of time

Article 174 – Pardon and grace

Article 175 – Not to mention the conviction in the certificate of criminal record

Article 176 – Conditional release

bb. Amnesty and Pardon

There are two main sources to be observed. A distinction must be made between the effect on the offence (amnesty, Art. 151 c.p.) and the effect on the punishment (Art. 174 c.p.). **7**

Article 79 Italian Constitution¹²⁷

Amnesty and pardon shall be granted by a law passed by a two-thirds majority of the members of each House, in each of its articles and in the final vote. **8**

The law granting an amnesty or pardon shall determine the time limit for its application. In any case, amnesty and pardon shall not apply to offences committed after the presentation of the bill.

¹²⁷ **Art. 79. Costituzione della Repubblica Italiana**

(L'amnistia e l'indulto sono concessi con legge deliberata a maggioranza dei due terzi dei componenti di ciascuna Camera, in ogni suo articolo e nella votazione finale. La legge che concede l'amnistia o l'indulto stabilisce il termine per la loro applicazione. In ogni caso l'amnistia e l'indulto non possono applicarsi ai reati commessi successivamente alla presentazione del disegno di legge).

Article 151 CC¹²⁸ [Amnesty]

The amnesty **extinguishes the offence**, and, if there has been a conviction [Code of Criminal Procedure 535, 648, 650], it terminates the execution of the sentence and accessory penalties [Code of Criminal Procedure 672].

In the concurrence of several offences, the amnesty applies to the individual offences for which it is granted.

The extinction of the offence as a result of the amnesty is limited to offences committed up to the day before the date of the decree, unless the decree establishes a different date(2).

Amnesty may be subject to conditions or obligations [Code of Criminal Procedure 672].

The amnesty does not apply to repeat offenders, in the cases provided for in the paragraphs of Article 99, nor to habitual, or professional, or offenders by tendency, unless the decree provides otherwise.

Article 174 CC¹²⁹ [Pardon and grace]

A pardon or grace **forgives, in whole or in part, the penalty** imposed, or commutes it to another type of penalty established by law. It does not extinguish accessory penalties, unless the decree provides otherwise, nor the other penal effects of the conviction.

In the case of the concurrence of several offences, the pardon is applied only once, after the sentences have been cumulated, according to the rules concerning the concurrence of offences.

The provisions contained in the last three paragraphs of Article 151 [Code of Criminal Procedure 672] shall be observed for pardons.

- 9 The formalities and procedures of the application of an amnesty or pardon are stipulated in the c.p.p.:

¹²⁸ **Art. 151 c.p.**

L'ammnistia estingue il reato, e, se vi è stata condanna [c.p.p. 648, 650], fa cessare l'esecuzione della condanna e le pene accessorie [c.p.p. 672].

Nel concorso di più reati, l'ammnistia si applica ai singoli reati per i quali è concessa.

La estinzione del reato per effetto dell'ammnistia è limitata ai reati commessi a tutto il giorno precedente la data del decreto, salvo che questo stabilisca una data diversa(2).

L'ammnistia può essere sottoposta a condizioni o ad obblighi [c.p.p. 672].

L'ammnistia non si applica ai recidivi, nei casi preveduti dai capoversi dell'articolo 99, né ai delinquenti abituali, o professionali o per tendenza, salvo che il decreto disponga diversamente.

¹²⁹ **Art. 174 c.p.**

L'indulto o la grazia condona, in tutto o in parte, la pena inflitta, o la commuta in un'altra specie di pena stabilita dalla legge. Non estingue le pene accessorie, salvo che il decreto disponga diversamente, e neppure gli altri effetti penali della condanna.

Nel concorso di più reati, l'indulto si applica una sola volta, dopo cumulate le pene, secondo le norme concernenti il concorso dei reati.

Si osservano, per l'indulto, le disposizioni contenute nei tre ultimi capoversi dell'articolo 151.

Article 672 CPC¹³⁰

1. For the application of an amnesty or pardon the execution judge shall proceed in accordance with Article 667 paragraph 4(1)(2).
2. When, as a consequence of the application of the amnesty or pardon, it is necessary to apply or modify a security measure pursuant to Article 210 of the Penal Code, the execution judge shall order the transmission of the acts to the supervisory magistrate.
3. The public prosecutor in charge of the execution of the conviction may provisionally order the release of the convicted prisoner or the termination of alternative sanctions and measures, before it is definitively ordered by the measure applying the amnesty or pardon [667 3].
4. Amnesty and pardon shall be applied, if the convicted person so requests, even if the execution of the sentence has ended.
5. Conditional amnesties and pardons have the effect of suspending the execution of the sentence or criminal decree until the expiry of the time limit set in the decree granting them or, if no time limit was set, until the expiry of the fourth month from the day of publication of the decree. Conditional amnesties and pardons are definitively applied if, at the expiry of the time limit, it is proved that the conditions or obligations to which the granting of the benefit is subject have been fulfilled.

¹³⁰ **Art. 672 c.p.p.**

1. Per l'applicazione dell'amnistia o dell'indulto il giudice dell'esecuzione procede a norma dell'articolo 667 comma 4(1)(2).
2. Quando, in conseguenza dell'applicazione dell'amnistia o dell'indulto, occorre applicare o modificare una misura di sicurezza a norma dell'articolo 210 del codice penale, il giudice dell'esecuzione dispone la trasmissione degli atti al magistrato di sorveglianza.
3. Il pubblico ministero che cura l'esecuzione della sentenza di condanna può disporre provvisoriamente la liberazione del condannato detenuto ovvero la cessazione delle sanzioni sostitutive e delle misure alternative, prima che essa sia definitivamente ordinata con il provvedimento che applica l'amnistia o l'indulto [667 3].
4. L'amnistia e l'indulto devono essere applicati, qualora il condannato ne faccia richiesta, anche se è terminata l'esecuzione della pena.
5. L'amnistia e l'indulto condizionati hanno per effetto di sospendere l'esecuzione della sentenza o del decreto penale fino alla scadenza del termine stabilito nel decreto di concessione o, se non fu stabilito termine, fino alla scadenza del quarto mese dal giorno della pubblicazione del decreto. L'amnistia e l'indulto condizionati si applicano definitivamente se, alla scadenza del termine, è dimostrato l'adempimento delle condizioni o degli obblighi ai quali la concessione del beneficio è subordinata.

cc. Criminal complaint

11

Title IV Activities on the initiative of the judicial police

Article 347¹³¹ Obligation to report the crime

1. Having acquired the crime report, the judicial police, without delay, reports to the public prosecutor, in writing, the essential elements of the fact and the other elements collected up to then, indicating the sources of evidence and the activities carried out, of which it transmits related documentation.

2. It also communicates, when possible, the personal details, the address and whatever else is valid for the identification of the person against whom the investigations are carried out, of the person offended by the crime and of those who are able to report on circumstances relevant to the reconstruction of the facts.

2-bis. If acts have been carried out for which the assistance of the defender of the person against whom the investigations are carried out is provided, the notification of the crime is sent no later than forty-eight hours from the completion of the deed, without prejudice to the provisions of the law which provide for special terms.

3. In the case of one of the crimes indicated in article 407, paragraph 2, letter a), numbers from 1) to 6), of this code, or one of the crimes provided for in articles 572, 609-bis, 609-ter, 609-quater, 609-quinquies, 609-octies, 612-bis and 612-ter of the criminal code, or by articles 582 and 583-quinquies of the criminal code in the aggravated cases pursuant to articles 576, first paragraph, numbers 2, 5 and 5.1, and 577, first paragraph, number 1, and second paragraph, of the same criminal code, and, in any case, ***when there are reasons of urgency, the notification of the crime is given immediately, also in oral form.*** The oral communication must be followed without delay by the written one with the indications and documentation provided for in paragraphs 1 and 2 (1).

4. With the communication, the judicial police indicate the day and time in which the news was acquired.

¹³¹ **Art. 347. c.p.p. Obbligo di riferire la notizia del reato.**

1. Acquisita la notizia di reato, la polizia giudiziaria, senza ritardo, riferisce al pubblico ministero, per iscritto, gli elementi essenziali del fatto e gli altri elementi sino ad allora raccolti, indicando le fonti di prova e le attività compiute, delle quali trasmette la relativa documentazione.

2. Comunica, inoltre, quando è possibile, le generalità, il domicilio e quanto altro valga alla identificazione della persona nei cui confronti vengono svolte le indagini, della persona offesa e di coloro che siano in grado di riferire su circostanze rilevanti per la ricostruzione dei fatti.

2-bis. Qualora siano stati compiuti atti per i quali è prevista l'assistenza del difensore della persona nei cui confronti vengono svolte le indagini, la comunicazione della notizia di reato è trasmessa al più tardi entro quarantotto ore dal compimento dell'atto, salve le disposizioni di legge che prevedono termini particolari.

3. Se si tratta di taluno dei delitti indicati nell'articolo 407, comma 2, lettera a), numeri da 1) a 6), del presente codice, o di uno dei delitti previsti dagli articoli 572, 609-bis, 609-ter, 609-quater, 609-quinquies, 609-octies, 612-bis e 612-ter del codice penale, ovvero dagli articoli 582 e 583-quinquies del codice penale nelle ipotesi aggravate ai sensi degli articoli 576, primo comma, numeri 2, 5 e 5.1, e 577, primo comma, numero 1, e secondo comma, del medesimo codice penale, e, in ogni caso, quando sussistono ragioni di urgenza, la comunicazione della notizia di reato è data immediatamente anche in forma orale. Alla comunicazione orale deve seguire senza ritardo quella scritta con le indicazioni e la documentazione previste dai commi 1 e 2 (1).

4. Con la comunicazione, la polizia giudiziaria indica il giorno e l'ora in cui ha acquisito la notizia.

dd. Prosecution before the trial court**Article 405 CPP¹³² Commencement of criminal prosecution Forms and time limits**

12

1-bis. At the conclusion of the investigation, the Public Prosecutor shall submit a request for dismissal when the Court of Cassation has ruled on the absence of serious evidence of culpability, pursuant to Article 273, and no further evidence has subsequently been obtained against the person under investigation.

2. Except as provided in Articles 406 and 415-bis, the Public Prosecutor shall conclude the preliminary investigations within one year from the date on which the name of the person to whom the offence is attributed is entered in the register of reports of offences. The period shall be six months if proceedings are for a contravention, and one year and six months if proceedings concern any of the offences indicated in Article 407, paragraph 2.

3. If a complaint, request, or application to proceed is required, the period shall run from the moment these are submitted to the Public Prosecutor.

4. If authorisation to proceed is required, the running of the period shall be suspended from the moment of the request until the authorisation is received by the Public Prosecutor.

ee. Opposing legal validity

See → Book VII, Chapter V, Title III CPP.

13

Article 525 CPP¹³³ Immediacy of the ruling

14

1. The judgment shall be delivered immediately after the close of the hearing.

2. The same judges who took part in the hearing shall take part in the deliberation, on penalty of absolute nullity. If substitute judges are to take part in the deliberation in place of the impeded holders, the orders already issued shall remain in force unless they are expressly revoked.

¹³² Art. 405. c.p.p. Termini per la conclusione delle indagini preliminari

1-bis. Il pubblico ministero, al termine delle indagini, formula richiesta di archiviazione quando la Corte di cassazione si è pronunciata in ordine alla insussistenza dei gravi indizi di colpevolezza, ai sensi dell'articolo 273, e non sono stati acquisiti, successivamente, ulteriori elementi a carico della persona sottoposta alle indagini.

2. Salvo quanto previsto dagli articoli 406 e 415-bis, il pubblico ministero conclude le indagini preliminari entro il termine di un anno dalla data in cui il nome della persona alla quale è attribuito il reato è iscritto nel registro delle notizie di reato. Il termine è di sei mesi, se si procede per una contravvenzione, e di un anno e sei mesi, se si procede per taluno dei delitti indicati nell'articolo 407, comma 2.

3. Se è necessaria la querela, l'istanza o la richiesta di procedimento, il termine decorre dal momento in cui queste pervengono al pubblico ministero.

4. Se è necessaria l'autorizzazione a procedere, il decorso del termine è sospeso dal momento della richiesta a quello in cui l'autorizzazione perviene al pubblico ministero.

¹³³ Art. 525. Immediatezza della deliberazione c.p.p.

1. La sentenza e' deliberata subito dopo la chiusura del dibattimento.

2. Alla deliberazione concorrono, a pena di nullita' assoluta, gli stessi giudici che hanno partecipato al dibattimento. Se alla deliberazione devono concorrere i giudici supplenti in sostituzione dei titolari impediti, i provvedimenti gia' emessi conservano efficacia se non sono espressamente revocati.

3. Salvo quanto previsto dall'articolo 528, la deliberazione non puo' essere sospesa se non in caso di assoluta impossibilita'. La sospensione e' disposta dal presidente con ordinanza.

3. Without prejudice to the provisions of Article 528, the deliberations may not be suspended except in case of absolute impossibility. The suspension shall be ordered by the President by order.

- 15 The provisions quoted above can extinguish or “**preclude**” the EPPO’s right of evocation because they create national procedural or substantive **barriers** that, once triggered or completed, legally prevent the EPPO from taking over a case, even if the offence falls within its material competence under Articles 22 and 23 EPPO Regulation. In practice, the EPPO’s right of evocation depends on national **authorities not taking irreversible procedural steps** or allowing **national rules to terminate the prosecution** before the EPPO acts. The main “precluding” factors in Italian law are: Once the limitation period expires under Articles 157–161 of the Italian Penal Code, the offence is extinguished.
- 16 This removes the legal basis for any further prosecution, so even if the EPPO later wishes to evoke the case, it has no competence because prosecution is no longer possible in Italy. Under Article 79 of the Constitution and Articles 151 and 174 of the Penal Code, an **amnesty** extinguishes the offence and a **pardon** extinguishes the penalty. As seen if an amnesty is granted before EPPO evocation, the offence ceases to exist in law; the EPPO cannot prosecute it. Under Article 27 para 2 EPPO Regulation, national authorities must refrain from decisions that preclude evocation during the EPPO’s decision period. In Italian procedure, certain acts such as **final acquittal, irrevocable indictment, or judgment delivery** under Articles 405 and 525 CPP can definitively close the proceedings or fix the trial court’s jurisdiction, preventing the EPPO from intervening. The EPPO’s competence is thus concurrent but not absolute.

17 **Article 530 CPP¹³⁴ Sentence of acquittal**

1. If the fact does not exist, if the defendant did not commit it, if the fact does not constitute an offence or is not envisaged by law as an offence, or if the offence was committed by a person who cannot be charged or is not punishable for another reason, the judge pronounces a sentence of acquittal, stating the reason in the operative part.

¹³⁴ **Art. 530 c.p.p. Sentenza di assoluzione**

1. Se il fatto non sussiste, se l’imputato non lo ha commesso, se il fatto non costituisce reato o non e’ previsto dalla legge come reato ovvero se il reato e’ stato commesso da persona non imputabile o non punibile per un’altra ragione, il giudice pronuncia sentenza di assoluzione indicandone la causa nel dispositivo.

2. Il giudice pronuncia sentenza di assoluzione anche quando manca, e’ insufficiente o e’ contraddittoria la prova che il fatto sussiste, che l’imputato lo ha commesso, che il fatto costituisce reato o che il reato e’ stato commesso da persona imputabile.

3. Se vi e’ la prova che il fatto e’ stato commesso in presenza di una causa di giustificazione o di una causa personale di non punibilita’ ovvero vi e’ dubbio sull’esistenza delle stesse, il giudice pronuncia sentenza di assoluzione a norma del comma 1.

4. Con la sentenza di assoluzione il giudice applica, nei casi previsti dalla legge, le misure di sicurezza.

2. The judge shall also pronounce a sentence of acquittal when there is no, insufficient or contradictory evidence that the fact exists, that the defendant committed it, that the fact constitutes an offence or that the offence was committed by a person chargeable.
3. If there is proof that the fact was committed in the presence of a justification or a personal cause of non-punishment or there is doubt as to the existence of the same, the judge shall pronounce sentence of acquittal in accordance with paragraph 1.
4. With the judgment of acquittal, the judge shall apply, in cases provided for by law, the security measures.

ff. Abatement of action (dispense with prosecution)

Article 50 CPP¹³⁵ Prosecution

18

1. The public prosecutor shall bring criminal proceedings when there are no the conditions for a request for dismissal.
2. When no complaint, request, application or authorisation to proceed is required, the prosecution shall be exercised *ex officio*.
3. The prosecution may be suspended or interrupted only in cases expressly provided for by law.

See also

19

- Article 129 CPC – Obligation to immediately declare certain grounds of non-punishability and
- Article 415-bis – Note to the possible offender.

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

The rules of Book V in the Italian Criminal Procedure Code will apply. The title describes the tasks of the judicial police and their own actions in case of the appearance of a crime (*Attività a iniziativa della polizia giudiziaria*).

20

¹³⁵ **Art. 50. Azione penale c.p.p.**

1. Il pubblico ministero esercita l'azione penale quando non sussistono i presupposti per la richiesta di archiviazione.
2. Quando non e' necessaria la querela, la richiesta, l'istanza o l'autorizzazione a procedere, l'azione penale e' esercitata di ufficio.
3. L'esercizio dell'azione penale puo' essere sospeso o interrotto soltanto nei casi espressamente previsti dalla legge.

- 21** **Second Part Preliminary Investigations And Preliminary Hearing**
Title I General Provisions
Article 326 CPP¹³⁶ Purpose of the preliminary investigations
1. The public prosecutor and the judicial police carry out, within the scope of their respective powers, the investigations necessary for the decisions relating to the exercise of the criminal action.
- Article 327 CPP¹³⁷ Direction of preliminary investigations**
1. The public prosecutor directs the investigation and disposes directly the judicial police who, even after the communication of the crime, continues to carry out activities on its own initiative according to the modalities indicated in the following articles. [...]
- 22** These urgent measures ensure that **critical evidence e.g. VAT documents are not lost during the period** in which the EPPO is deciding whether to take over the case. They preserve the procedural viability of an eventual EPPO prosecution by preventing suspects from fleeing, evidence from being destroyed, or assets from being dissipated.
- 23** They create a bridge between national and EPPO competence, maintaining the case in a recoverable state for EPPO evocation without undermining its rights. Particularly important is **Art. 348 CPP**, which contains the assurance of sources of evidence and stipulates that the judicial police (in normal fraud cases), whose tasks are referred to in Art. 55 CPP, can act without special permission or instruction:

¹³⁶ **Art. 326. Finalita' delle indagini preliminari c.p.p.**

1. Il pubblico ministero e la polizia giudiziaria svolgono, nell'ambito delle rispettive attribuzioni, le indagini necessarie per le determinazioni inerenti all'esercizio dell'azione penale.

¹³⁷ **Art. 327. Direzione delle indagini preliminari c.p.p.**

1. Il pubblico ministero dirige le indagini e dispone direttamente della polizia giudiziaria (che, anche dopo la comunicazione della notizia di reato, continua a svolgere attivita' di propria iniziativa secondo le modalita' indicate nei successivi articoli. [...]

Article 348 CPC¹³⁸ Assurance of sources of evidence

1. Even after the report of the crime has been communicated, *the judicial police continues to carry out the functions indicated in article 55, collecting in particular all elements useful for reconstructing the fact and identifying the guilty party.*
2. For the purpose indicated in paragraph 1, it proceeds, among other things:
 - a) *in search of things and traces pertaining to the crime as well as to the conservation of them and the state of the places;*
 - b) *looking for people able to report on circumstances relevant to the reconstruction of the facts;*
 - c) to carry out the acts indicated in the following articles.
3. After the intervention of the public prosecutor, the judicial police carry out the acts specifically delegated to it in accordance with Article 370, carry out the directives of the public prosecutor and also carry out on its own initiative, promptly informing the public prosecutor, all other activities of investigation to ascertain the crimes or requested by virtue of elements subsequently emerged and ensures the new sources of evidence.
4. *The judicial police, when, on its own initiative or following a delegation from the public prosecutor, carries out acts or operations that require specific technical skills, can make use of suitable persons who cannot refuse their work.*

¹³⁸ **Art. 348. c.p.p. Assicurazione delle fonti di prova.**

1. Anche successivamente alla comunicazione della notizia di reato, la polizia giudiziaria continua a svolgere le funzioni indicate nell'articolo 55 raccogliendo in specie ogni elemento utile alla ricostruzione del fatto e alla individuazione del colpevole.
2. Al fine indicato nel comma 1, procede, fra l'altro:
 - a) alla ricerca delle cose e delle tracce pertinenti al reato nonché alla conservazione di esse e dello stato dei luoghi;
 - b) alla ricerca delle persone in grado di riferire su circostanze rilevanti per la ricostruzione dei fatti;
 - c) al compimento degli atti indicati negli articoli seguenti.
3. Dopo l'intervento del pubblico ministero, la polizia giudiziaria compie gli atti ad essa specificamente delegati a norma dell'articolo 370, esegue le direttive del pubblico ministero ed inoltre svolge di propria iniziativa, informandone prontamente il pubblico ministero, tutte le altre attività di indagine per accertare i reati ovvero richieste da elementi successivamente emersi e assicura le nuove fonti di prova. (1)
4. La polizia giudiziaria, quando, di propria iniziativa o a seguito di delega del pubblico ministero, compie atti od operazioni che richiedono specifiche competenze tecniche, può avvalersi di persone idonee le quali non possono rifiutare la propria opera.

24 The same or an equal **urgent action** applies in order to identify the person against whom the investigations are carried out and of other persons:

25 **Article 349 Identification of the person against whom the investigations are carried out and of other persons.**¹³⁹

1. The judicial police *proceed with the identification of the person* against whom the investigations are carried out and of the persons able to *report on circumstances relevant to the reconstruction of the facts*.

2. The identification of the person against whom the investigations are carried out can also be carried out by carrying out, where necessary, fingerprinting, photographic and anthropometric surveys as well as other investigations. The findings referred to in the previous period are always carried out when proceeding against a stateless person, a person whose citizenship is unknown, a citizen of a State not belonging to the European Union or a citizen of a Member State of the 'European Union without a tax code or who is currently, or has been in the past, also the holder of the citizenship of a State not belonging to the European Union. In that case, the judicial police transmits to the public prosecutor a copy of the photodactyloscopic card and communicates the univocal identification code of the person against whom the investigations are carried out.

¹³⁹ **Art. 349. c.p.p. Identificazione della persona nei cui confronti vengono svolte le indagini e di altre persone.**

1. La polizia giudiziaria procede alla identificazione della persona nei cui confronti vengono svolte le indagini e delle persone in grado di riferire su circostanze rilevanti per la ricostruzione dei fatti.

2. Alla identificazione della persona nei cui confronti vengono svolte le indagini può procedersi anche eseguendo, ove occorra, rilievi dattiloscopici, fotografici e antropometrici nonché altri accertamenti. I rilievi di cui al periodo precedente sono sempre eseguiti quando si procede nei confronti di un apolide, di una persona della quale è ignota la cittadinanza, di un cittadino di uno Stato non appartenente all'Unione europea ovvero di un cittadino di uno Stato membro dell'Unione europea privo del codice fiscale o che è attualmente, o è stato in passato, titolare anche della cittadinanza di uno Stato non appartenente all'Unione europea. In tale caso, la polizia giudiziaria trasmette al pubblico ministero copia del cartellino fotodattiloscopico e comunica il codice univoco identificativo della persona nei cui confronti sono svolte le indagini. (3)

2-bis. Se gli accertamenti indicati dal comma 2 comportano il prelievo di capelli o saliva e manca il consenso dell'interessato, la polizia giudiziaria procede al prelievo coattivo nel rispetto della dignità personale del soggetto, previa autorizzazione scritta, oppure resa oralmente e confermata per iscritto, del pubblico ministero. (1)

3. Quando procede alla identificazione, la polizia giudiziaria invita la persona nei cui confronti vengono svolte le indagini a dichiarare o a eleggere il domicilio per le notificazioni a norma dell'articolo 161, nonché ad indicare il recapito della casa di abitazione, del luogo in cui esercita abitualmente l'attività lavorativa e dei luoghi in cui ha temporanea dimora o domicilio, oltre che ad indicare i recapiti telefonici o gli indirizzi di posta elettronica nella sua disponibilità. Osserva inoltre le disposizioni dell'articolo 66.

4. Se taluna delle persone indicate nel comma 1 rifiuta di farsi identificare ovvero fornisce generalità o documenti di identificazione in relazione ai quali sussistono sufficienti elementi per ritenerne la falsità, la polizia giudiziaria la accompagna nei propri uffici e ivi la trattiene per il tempo strettamente necessario per la identificazione e comunque non oltre le dodici ore ovvero, previo avviso anche orale al pubblico ministero, non oltre le ventiquattro ore, nel caso che l'identificazione risulti particolarmente complessa oppure occorra l'assistenza dell'autorità consolare o di un interprete, ed in tal caso con facoltà per il soggetto di chiedere di avvisare un familiare o un convivente. (2)

5. Dell'accompagnamento e dell'ora in cui questo è stato compiuto è data immediata notizia al pubblico ministero il quale, se ritiene che non ricorrono le condizioni previste dal comma 4, ordina il rilascio della persona accompagnata.

6. Al pubblico ministero è data altresì notizia del rilascio della persona accompagnata e dell'ora in cui esso è avvenuto.

2-bis. If the investigations indicated in paragraph 2 involve the removal of hair or saliva and the consent of the interested party is lacking, the judicial police proceed with the compulsory collection in respect of the personal dignity of the subject, subject to written authorisation, or made orally and confirmed in writing, of the Public minister. (1)

3. When carrying out identification, the judicial police shall invite the person under investigation to declare or to elect a domicile for service of documents in accordance with Article 161, and to indicate the address of their residence, the place where they habitually carry out their work activity, and any locations where they have temporary residence or domicile, as well as to provide any telephone numbers or email addresses at their disposal. The provisions of Article 66 shall also be observed.

4. If any of the persons indicated in paragraph 1 refuses to be identified or provides general information or identification documents in relation to which there are sufficient elements to believe that they are false, the judicial police will accompany them to their offices and hold them there for the time strictly necessary for identification and in any case no later than twelve hours or, subject to oral notice to the public prosecutor, no later than twenty-four hours, in the event that the identification is particularly complex or the assistance of the consular authority or an interpreter is required, and in this case, the subject has the right to ask to notify a family member or cohabitant. (2)

5. Immediate notice is given to the public prosecutor of the accompaniment and of the time at which it was carried out, who, if he considers that the conditions provided for in paragraph 4 are not met, orders the release of the person accompanied.

6. The public prosecutor is also informed of the release of the person accompanied and of the time at which it took place.

The questioning and the hearing of the person suspected of having committed a PIF Acquis offence at this stage can be a summoning according to Art. 350 CPP: 26

Article 350 CPC Summary information from the person against whom the investigations are carried out 27

1.¹⁴⁰ Judicial police officers *shall take*, in the manner provided for in Article 64, *summary information useful for investigations* from the person against whom the investigations are carried out who is not under arrest or detention pursuant to Article 384, and in the cases referred to in article 384-bis.

¹⁴⁰ **Art. 350. c.p.p. Sommarie informazioni dalla persona nei cui confronti vengono svolte le indagini.**

1. Gli ufficiali di polizia giudiziaria assumono, con le modalità previste dall'articolo 64, sommarie informazioni utili per le investigazioni dalla persona nei cui confronti vengono svolte le indagini che non si trovi in stato di arresto o di fermo a norma dell'articolo 384, e nei casi di cui all'articolo 384-bis. (1)

2. Prima di assumere le sommarie informazioni, la polizia giudiziaria invita la persona nei cui confronti vengono svolte le indagini a nominare un difensore di fiducia e, in difetto, provvede a norma dell'articolo 97 comma 3.

2. Before obtaining the summary information, the judicial police invites the person against whom the investigations are carried out to appoint a trusted lawyer and, failing that, proceeds in accordance with article 97 paragraph 3.
3. The summary information is obtained with the necessary assistance of the defender, to whom the judicial police give timely notice. The defender has the obligation to be present at the completion of the deed.
4. If the defender has not been found or has not appeared, the judicial police ask the public prosecutor to take action in accordance with article 97, paragraph 4.
- 4-bis. Where the person under investigation and their counsel consent, the Public Prosecutor may, at the request of the judicial police, authorise the carrying out of the act remotely. The provisions of Article 133-ter shall be observed, insofar as they are compatible.
5. On the spot or in the immediacy of the fact, the judicial police officers may, even without the presence of the defender, hire the person against whom the investigations are carried out, even if arrested in the act or arrested in accordance with Article 384, useful information and information for the immediate continuation of the investigations.
6. Any documentation and use of news and information taken without the assistance of the defender on the spot or in the immediacy of the fact pursuant to paragraph 5 is prohibited.
7. The judicial police may also receive spontaneous declarations from the person against whom the investigations are carried out, but their use in the trial is not permitted, except as provided for in article 503 paragraph 3.

Article 351¹⁴¹ Other summary information

1. The judicial police collect summary information from people who can report circumstances that are useful for the purposes of the investigation. The provisions of the second and third sentence of paragraph 1 of article 362 apply. [...]

3. Le sommarie informazioni sono assunte con la necessaria assistenza del difensore, al quale la polizia giudiziaria dà tempestivo avviso. Il difensore ha l'obbligo di presenziare al compimento dell'atto.

4. Se il difensore non è stato reperito o non è comparso, la polizia giudiziaria richiede al pubblico ministero di provvedere a norma dell'articolo 97, comma 4.

4-bis. Quando la persona sottoposta alle indagini e il difensore vi consentono, il pubblico ministero, su richiesta della polizia giudiziaria, può autorizzare lo svolgimento dell'atto a distanza. Si osservano, in quanto compatibili, le disposizioni dell'articolo 133-ter.

5. Sul luogo o nell'immediatezza del fatto, gli ufficiali di polizia giudiziaria possono, anche senza la presenza del difensore, assumere dalla persona nei cui confronti vengono svolte le indagini, anche se arrestata in flagranza o fermata a norma dell'articolo 384, notizie e indicazioni utili ai fini della immediata prosecuzione delle indagini.

6. Delle notizie e delle indicazioni assunte senza l'assistenza del difensore sul luogo o nell'immediatezza del fatto a norma del comma 5 è vietata ogni documentazione e utilizzazione.

7. La polizia giudiziaria può altresì ricevere dichiarazioni spontanee dalla persona nei cui confronti vengono svolte le indagini, ma di esse non è consentita la utilizzazione nel dibattimento, salvo quanto previsto dall'articolo 503 comma 3.

¹⁴¹ **Art. 351. c.p.p. Altre sommarie informazioni.**

1. La polizia giudiziaria assume sommarie informazioni dalle persone che possono riferire circostanze utili ai fini delle indagini. Si applicano le disposizioni del secondo e terzo periodo del comma 1 dell'articolo 362. (1) [...].

Article 352¹⁴² Searches

1. In flagrante delicto or in the case of evasion, *the judicial police officers carry out a personal or local search when* they have well-founded reason to believe that the person has hidden things or traces pertaining to the crime that can be deleted or dispersed or that such things or traces are in a specific place or that the person under investigation or the escaped person is there.

1-bis. In flagrante delicto, or in the cases referred to in paragraph 2 when the conditions and other conditions provided for therein exist, the judicial police officers, adopting technical measures aimed at ensuring the conservation of the original data and preventing its alteration, also proceed to the search of computer or telematic systems, even if protected by security measures, when they have well-founded reason to believe that in these there are hidden data, information, computer programs or traces in any case pertinent to the crime that can be deleted or dispersed.

2. When it is necessary to proceed with the execution of an order that provides for precautionary custody or an order that orders the imprisonment of a person accused or sentenced for one of the crimes provided for in Article 380 or the detention of a person suspected of crime, the judicial police officers may also carry out a personal or local search if the conditions indicated in paragraph 1 are met and there are particular reasons of urgency that do not allow the issuance of a timely search decree.

3. The house *search can also be carried out outside the time limits of article 251* when the delay could jeopardize the outcome.

¹⁴² Art. 352. c.p.p. Perquisizioni.

1. Nella flagranza del reato o nel caso di evasione, gli ufficiali di polizia giudiziaria procedono a perquisizione personale o locale quando hanno fondato motivo di ritenere che sulla persona si trovino occultate cose o tracce pertinenti al reato che possono essere cancellate o disperse ovvero che tali cose o tracce si trovino in un determinato luogo o che ivi si trovi la persona sottoposta alle indagini o l'evaso.

1-bis. Nella flagranza del reato, ovvero nei casi di cui al comma 2 quando sussistono i presupposti e le altre condizioni ivi previsti, gli ufficiali di polizia giudiziaria, adottando misure tecniche dirette ad assicurare la conservazione dei dati originali e ad impedirne l'alterazione, procedono altresì alla perquisizione di sistemi informatici o telematici, ancorché protetti da misure di sicurezza, quando hanno fondato motivo di ritenere che in questi si trovino occultati dati, informazioni, programmi informatici o tracce comunque pertinenti al reato che possono essere cancellati o dispersi. (1)

2. Quando si deve procedere alla esecuzione di un'ordinanza che dispone la custodia cautelare o di un ordine che dispone la carcerazione nei confronti di persona imputata o condannata per uno dei delitti previsti dall'articolo 380 ovvero al fermo di una persona indiziata di delitto, gli ufficiali di polizia giudiziaria possono altresì procedere a perquisizione personale o locale se ricorrono i presupposti indicati nel comma 1 e sussistono particolari motivi di urgenza che non consentono la emissione di un tempestivo decreto di perquisizione.

3. La perquisizione domiciliare può essere eseguita anche fuori dei limiti temporali dell'articolo 251 quando il ritardo potrebbe pregiudicarne l'esito.

4. La polizia giudiziaria trasmette senza ritardo, e comunque non oltre le quarantotto ore, al pubblico ministero del luogo dove la perquisizione è stata eseguita il verbale delle operazioni compiute. Il pubblico ministero, se ne ricorrono i presupposti, nelle quarantotto ore successive, convalida la perquisizione.

4-bis. Salvo che alla perquisizione sia seguito il sequestro, entro dieci giorni dalla data in cui hanno avuto conoscenza del decreto di convalida, la persona nei cui confronti vengono svolte le indagini e la persona nei cui confronti la perquisizione è stata disposta o eseguita possono proporre opposizione, sulla quale il giudice provvede a norma dell'articolo 127. Si applica la disposizione di cui all'articolo 252-bis, comma 3.

4. The judicial police ***shall send without delay***, and in any case no later than forty-eight hours, to the public prosecutor of the place where the search was carried out ***the report of the operations carried out***. The public prosecutor, if the conditions are met, in the following forty-eight hours, validates the search.

4-bis. Except where the search is followed by seizure, within ten days from the date on which they became aware of the validation decree, the person under investigation and the person in respect of whom the search was ordered or carried out may file an opposition, on which the judge shall rule in accordance with Article 127. The provision of Article 252-bis, paragraph 3, shall apply.

28 Especially in case of VAT frauds, or customs frauds the opening of packages, parcels and post items might be necessary to identify if any goods are transported, which are **subject to VAT** but on paper (fraudulently) declared exempted from VAT.

29 **Article 353¹⁴³ Acquisition of packages or correspondence**

1. When there is a need to acquire sealed or otherwise closed packages, the judicial police officer transmits them intact to the public prosecutor for possible seizure.

2. If the officer of the judicial police has reasonable grounds to believe that the packages contain information useful for the search and for the assurance of sources of evidence that could be lost due to the delay, he shall inform the public prosecutor in the fastest possible way, who may authorise the immediate opening and verification of the content.

3. In the case of letters, folders, parcels, valuables, telegrams or other items of correspondence, even if in electronic form or sent electronically, (2) for which seizure is permitted pursuant to Article 254, in case of urgency, the judicial police officers order the person in charge of the postal, telegraphic, telematic or telecommunication service (3) to suspend the forwarding. If within forty-eight hours from the order of the judicial police the public prosecutor does not order the seizure, the items of correspondence are forwarded.

¹⁴³ **Art. 353. c.p.p. Acquisizione di plichi o di corrispondenza.**

1. Quando vi è necessità di acquisire plichi sigillati o altrimenti chiusi, l'ufficiale di polizia giudiziaria li trasmette intatti al pubblico ministero per l'eventuale sequestro.

2. Se ha fondato motivo di ritenere che i plichi contengano notizie utili alla ricerca e all'assicurazione di fonti di prova che potrebbero andare disperse a causa del ritardo, l'ufficiale di polizia giudiziaria informa col mezzo più rapido il pubblico ministero il quale può autorizzarne l'apertura immediata e l'accertamento del contenuto. (1)

3. Se si tratta di lettere, pieghi, pacchi, valori, telegrammi o altri oggetti di corrispondenza, anche se in forma elettronica o se inoltrati per via telematica, (2) per i quali è consentito il sequestro a norma dell'articolo 254, gli ufficiali di polizia giudiziaria, in caso di urgenza, ordinano a chi è preposto al servizio postale, telegrafico, telematico o di telecomunicazione (3) di sospendere l'inoltro. Se entro quarantotto ore dall'ordine della polizia giudiziaria il pubblico ministero non dispone il sequestro, gli oggetti di corrispondenza sono inoltrati.

Article 354 Urgent investigations on places, things and people. Seizure.¹⁴⁴

1. The officers and agents of the judicial police *ensure that the traces and things pertaining to the crime are preserved* and that the state of places and things is not changed before the intervention of the public prosecutor.
2. If there is a *danger that the things, traces and places* indicated in paragraph 1 *are altered or dispersed or in any case changed* and the public prosecutor cannot intervene promptly, or has not yet taken over the direction of the investigations, *the judicial police officers make the necessary investigations and surveys on the state of places and things*. In relation to data, information and computer programs or computer or telematic systems, the officers of the judicial police also adopt the technical measures or give the necessary prescriptions to ensure their conservation and to prevent their alteration and access and where possible, they are immediately duplicated on suitable supports, by means of a procedure that ensures the conformity of the copy to the original and that it cannot be modified. (1) If necessary, they seize the body of the crime and the things pertaining to it.
3. If the conditions provided for in paragraph 2 are met, the judicial police officers carry out the necessary investigations and surveys on persons other than personal inspection. (2)

From the **defence lawyer's perspective** it is very important to know what the judicial police did. A failure at this stage may lead to a **ban to use evidence** at a later (trial) stage. 30

Article 357 CPC Documentation of the judicial police activity

- 1.¹⁴⁵ The judicial police shall note, in the manner deemed suitable for the purposes of the investigations, even summarily, all the activities carried out, including those aimed at identifying the sources of evidence. 31

¹⁴⁴ **Art. 354. c.p.p. Accertamenti urgenti sui luoghi, sulle cose e sulle persone. Sequestro.**

1. Gli ufficiali e gli agenti di polizia giudiziaria curano che le tracce e le cose pertinenti al reato siano conservate e che lo stato dei luoghi e delle cose non venga mutato prima dell'intervento del pubblico ministero.

2. Se vi è pericolo che le cose, le tracce e i luoghi indicati nel comma 1 si alterino o si disperdano o comunque si modificano e il pubblico ministero non può intervenire tempestivamente, ovvero non ha ancora assunto la direzione delle indagini, gli ufficiali di polizia giudiziaria compiono i necessari accertamenti e rilievi sullo stato dei luoghi e delle cose. In relazione ai dati, alle informazioni e ai programmi informatici o ai sistemi informatici o telematici, gli ufficiali della polizia giudiziaria adottano, altresì, le misure tecniche o impartiscono le prescrizioni necessarie ad assicurarne la conservazione e ad impedirne l'alterazione e l'accesso e provvedono, ove possibile, alla loro immediata duplicazione su adeguati supporti, mediante una procedura che assicuri la conformità della copia all'originale e la sua immodificabilità. (1) Se del caso, sequestrano il corpo del reato e le cose a questo pertinenti.

3. Se ricorrono i presupposti previsti dal comma 2, gli ufficiali di polizia giudiziaria compiono i necessari accertamenti e rilievi sulle persone diversi dalla ispezione personale.

¹⁴⁵ **Art. 357 c.p.p. Documentazione dell'attività di polizia giudiziaria.**

2. Without prejudice to the provisions in relation to specific activities, draw up the minutes of the following documents:

- a) reports, complaints and requests presented orally;
- b) summary information provided and spontaneous statements received from the person against whom the investigations are carried out;
- c) information obtained, pursuant to article 351;
- d) searches and seizures;
- e) operations and assessments provided for in articles 349, 353 and 354;
- f) deeds, which describe facts and situations, possibly carried out until the public prosecutor has given the directives for carrying out the investigations.

3. The minutes is drawn up by officers or agents of the judicial police in the forms and in the manner provided for in article 373.

3-bis. Where the investigations concern any of the offences referred to in Article 407, paragraph 2, letter a), or where the person informed of the facts so requests, the documentation of the information referred to in paragraph 2, letter c), shall also be carried out by phonographic recording using technical instruments suitable for the purpose by the judicial police, subject to the contingent unavailability of reproduction instruments or technical personnel.

3-ter. The statements of a minor, a person of unsound mind, or a person in conditions of particular vulnerability shall be fully documented, under penalty of inadmissibility, by audiovisual or phonographic means, except where there is a contingent unavailability of

1. La polizia giudiziaria annota secondo le modalità ritenute idonee ai fini delle indagini, anche sommariamente, tutte le attività svolte, comprese quelle dirette alla individuazione delle fonti di prova.

2. Fermo quanto disposto in relazione a specifiche attività, redige verbale dei seguenti atti:

- a) denunce, querele e istanze presentate oralmente;
- b) sommarie informazioni rese e dichiarazioni spontanee ricevute dalla persona nei cui confronti vengono svolte le indagini (1);
- c) informazioni assunte, a norma dell'articolo 351 (2);
- d) perquisizioni e sequestri;
- e) operazioni e accertamenti previsti dagli articoli 349, 353 e 354;
- f) atti, che descrivono fatti e situazioni, eventualmente compiuti sino a che il pubblico ministero non ha impartito le direttive per lo svolgimento delle indagini.

3. Il verbale è redatto da ufficiali o agenti di polizia giudiziaria nelle forme e con le modalità previste dall'articolo 373.

3-bis. Quando le indagini riguardano taluno dei delitti di cui all'articolo 407, comma 2, lettera a), oppure quando la persona informata sui fatti ne faccia richiesta, alla documentazione delle informazioni di cui al comma 2, lettera c), si procede altresì mediante riproduzione fonografica a mezzo di strumenti tecnici idonei ad opera della polizia giudiziaria, salva la contingente indisponibilità di strumenti di riproduzione o di personale tecnico (3).

3-ter. Le dichiarazioni della persona minorenni, inferma di mente o in condizioni di particolare vulnerabilità sono documentate integralmente, a pena di inutilizzabilità, con mezzi di riproduzione audiovisiva o fonografica, salvo che si verifichi una contingente indisponibilità di strumenti di riproduzione o di personale tecnico e sussistano particolari ragioni di urgenza che non consentano di rinviare l'atto (3).

3-quater. La trascrizione della riproduzione audiovisiva o fonografica di cui ai commi 3-bis e 3-ter è disposta solo se assolutamente indispensabile e può essere effettuata dalla polizia giudiziaria (3).

4. La documentazione dell'attività di polizia giudiziaria è posta a disposizione del pubblico ministero.

5. A disposizione del pubblico ministero sono altresì poste le denunce, le istanze e le querele presentate per iscritto, i referti, il corpo del reato e le cose pertinenti al reato.

reproduction instruments or technical personnel, and particular urgent reasons prevent the act from being postponed.

3-quater. The transcription of the audiovisual or phonographic recording referred to in paragraphs 3-bis and 3-ter shall be ordered only if absolutely indispensable, and may be carried out by the judicial police.

4. The documentation of the judicial police activity is made available to the public prosecutor.

5. The reports, requests and complaints presented in writing, medical reports, the body of the crime and the things pertinent to the crime are also made available to the public prosecutor.

Article 386 CPC Duties of the judicial police in the event of arrest or detention

32

1.¹⁴⁶ The officers and agents of the judicial police who have carried out the arrest or detention, or who have taken custody of the arrested person, shall immediately notify

¹⁴⁶ **Art. 386. Codice di Procedura Penale Doveri della polizia giudiziaria in caso di arresto o di fermo.**

1. Gli ufficiali e gli agenti di polizia giudiziaria che hanno eseguito l'arresto o il fermo o hanno avuto in consegna l'arrestato, ne danno immediata notizia al pubblico ministero del luogo ove l'arresto o il fermo è stato eseguito. Consegnano all'arrestato o al fermato una comunicazione scritta, redatta in forma chiara e precisa e, se questi non conosce la lingua italiana, tradotta in una lingua a lui comprensibile, con cui lo informano:

- a) della facoltà di nominare un difensore di fiducia e di essere ammesso al patrocinio a spese dello Stato nei casi previsti dalla legge;
 - b) del diritto di ottenere informazioni in merito all'accusa;
 - c) del diritto all'interprete ed alla traduzione di atti fondamentali;
 - d) del diritto di avvalersi della facoltà di non rispondere;
 - e) del diritto di accedere agli atti sui quali si fonda l'arresto o il fermo;
 - f) del diritto di informare le autorità consolari e di dare avviso ai familiari;
 - g) del diritto di accedere all'assistenza medica di urgenza;
 - h) del diritto di essere condotto davanti all'autorità giudiziaria per la convalida entro novantasei ore dall'avvenuto arresto o fermo;
 - i) del diritto di comparire dinanzi al giudice per rendere l'interrogatorio e di proporre ricorso per cassazione contro l'ordinanza che decide sulla convalida dell'arresto o del fermo.
- i-bis) della facoltà di accedere ai programmi di giustizia riparativa.

1-bis. Qualora la comunicazione scritta di cui al comma 1 non sia prontamente disponibile in una lingua comprensibile all'arrestato o al fermato, le informazioni sono fornite oralmente, salvo l'obbligo di dare comunque, senza ritardo, comunicazione scritta all'arrestato o al fermato.

1-ter. La comunicazione scritta di cui al comma 1 viene allegata agli atti in forma di documento informatico. Se l'originale è redatto in forma di documento analogico, si osservano le disposizioni degli articoli 110, comma 4, e 111-ter, comma 3.

2. Dell'avvenuto arresto o fermo gli ufficiali e gli agenti di polizia giudiziaria informano immediatamente il difensore di fiducia eventualmente nominato ovvero quello di ufficio designato dal pubblico ministero a norma dell'articolo 97.

3. Qualora non ricorra l'ipotesi prevista dall'articolo 389 comma 2, gli ufficiali e gli agenti di polizia giudiziaria pongono l'arrestato o il fermato a disposizione del pubblico ministero al più presto e comunque non oltre ventiquattro ore dall'arresto o dal fermo. Entro il medesimo termine trasmettono il relativo verbale, anche per via telematica, salvo che il pubblico ministero autorizzi una dilazione maggiore. Il verbale contiene l'eventuale nomina del difensore di fiducia, l'indicazione del giorno, dell'ora e del luogo in cui l'arresto o il fermo è stato eseguito e l'enunciazione delle ragioni che lo hanno determinato nonché la menzione dell'avvenuta consegna della comunicazione scritta o dell'informazione orale fornita ai sensi del comma 1-bis.

the Public Prosecutor of the place where the arrest or detention was carried out. They shall provide the arrested or detained person with a written communication, drafted in clear and precise terms and, if the person does not understand the Italian language, translated into a language they comprehend, informing them of:

- a) of the right to appoint a trusted lawyer and to be admitted to legal aid in the cases provided for by law;
- b) the right to obtain information on the accusation;
- c) the right to an interpreter and to the translation of fundamental acts;
- d) the right not to answer;
- e) the right to access the documents on which the arrest or detention is based;
- f) the right to inform the consular authorities and to give notice to family members;
- g) the right to access emergency medical assistance;
- h) the right to be brought before the judicial authority for validation within ninety-six hours from the arrest or detention;
- i) the right to appear before the judge to carry out the interrogation and to lodge an appeal in cassation against the order that decides on the validation of the arrest or detention.
- i-bis) the right to access restorative justice programmes.

1-bis. If the written communication referred to in paragraph 1 is not readily available in a language understandable to the arrested or detained person, the information is provided orally, except for the obligation to give, in any case, without delay, written communication to the arrested or detained person.

1-ter. The written communication referred to in paragraph 1 shall be attached to the case file in the form of an electronic document. If the original is drafted in analog form, the provisions of Articles 110, paragraph 4, and 111-ter, paragraph 3, shall apply.

2. Of the arrest or detention, the officers and judicial police officers immediately inform the trusted defender who may be appointed or that of the office designated by the public prosecutor pursuant to article 97.

3. If the hypothesis provided for by article 389 paragraph 2 does not occur, the officers and the agents of the judicial police shall place the person arrested or detained at the disposal of the public prosecutor as soon as possible and in any case no later than twenty-four hours after the arrest or detention. Within the same term, they send the relative report, also electronically, unless the public prosecutor authorises a longer delay. The

4. Gli ufficiali e gli agenti di polizia giudiziaria pongono l'arrestato o il fermato a disposizione del pubblico ministero mediante la conduzione nella casa circondariale o mandamentale del luogo dove l'arresto o il fermo è stato eseguito, salvo quanto previsto dall'articolo 558. (1)

5. Il pubblico ministero può disporre che l'arrestato o il fermato sia custodito, in uno dei luoghi indicati nel comma 1 dell'articolo 284 ovvero, se ne possa derivare grave pregiudizio per le indagini, presso altra casa circondariale o mandamentale.

6. Gli ufficiali e gli agenti di polizia giudiziaria trasmettono il verbale di fermo anche al pubblico ministero che lo ha disposto, se diverso da quello indicato nel comma 1.

7. L'arresto o il fermo diviene inefficace se non sono osservati i termini previsti dal comma 3.

report contains the eventual appointment of the defender of trust, the indication of the day, time and place in which the arrest or detention was carried out and the statement of the reasons that determined it as well as the mention of the delivery of the written communication or oral information provided pursuant to paragraph 1-bis.

4. The officers and judicial police officers place the arrested or detained person at the disposal of the public prosecutor by conducting them in the district or district house of the place where the arrest or detention was carried out, except as provided for in article 558. (1)

5. The public prosecutor may order that the person arrested or detained be kept in one of the places indicated in paragraph 1 of article 284 or, if this could cause serious damage to investigations, in another district or district office.

6. The officers and agents of the judicial police transmit the arrest report also to the public prosecutor who ordered it, if different from that indicated in paragraph 1.

7. The arrest or detention becomes ineffective if the terms provided by paragraph 3 are not observed.

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

The Italian Government has **notified the EPPO** with the following information:

33

“In accordance with artt. 10(3)(d), 24(2)–(3), 25(1) to (5), 26(7), 27(2) to (8), 34(1) to (3)/(5) to (7) of Regulation (EU) 2017/1939 the **national judicial and law enforcement authorities** that are competent to initiate and conduct a criminal investigation concerning criminal offences for which the EPPO is **competent are all Prosecutor’s offices and authorities with general judicial police functions** according to **Art. 57 of the Italian criminal procedure code**, that is, mainly,

- State Police (*Polizia di Stato*), Carabineer’s (*Arma dei Carabinieri*),
- Financial Police (*Guardia di Finanza*) and Prison Police (*Polizia Penitenziaria*).
- In addition, **authorities to which other Italian laws confer special judicial police functions**, including, for example the Customs Agency (*Agenzia delle Dogane*).”¹⁴⁷

d) Provisions regarding the finalisation of the national investigation, para 7

All provisions of the Italian Criminal Procedure Code, which are related to the finalization of investigations must be taken into account. Information regarding the finalisation of an investigation: s. 50 et seq., 326, 327, 358, 370, 407; Indictment: ss. 336, 405 et seq. (Book V, Title VIII Closure Of The Preliminary Investigations).

34

¹⁴⁷ See Italian Notification, Art. 117 EPPO Reg. to the EPPO, <https://www.eppo.europa.eu/sites/default/files/2021-11/16-IT.pdf>. Accessed 30 June 2025.

3. Article 28 Conducting the investigation

3. Article 28 Conducting the investigation.....	156	(1) Via the general investigation provisions	165
a) The handling EDP carrying out the investigative measures, para 1	157	(2) Via national administrative decrees/regulations under criminal procedural law	176
b) Instructions and assignment of investigative measures for “those national authorities”... ..	158	(a) Italy: Regulations for the Implementation of the Code of Criminal Procedure.....	176
aa. Guardia di Finanza/Italian Financial Police	161	(b) Specific Decrees, non-formal laws, execution of the CPC, Tax Acts	181
bb. Carabinieri Commands – their role and relationship to the EPPO	163	ff. Urgent measures in accordance with national law necessary to ensure effective investigations .	185
cc. Judicial police (Polizia Giudiziaria) and special audit staff.....	164	c) Provisions in relation to the Gathering Evidence	187
dd. Supplementary investigations by the “ICQRF” – Central Inspectorate for repression of fraud	164	d) Summary	192
ee. Ensuring compliance with national law	165		

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.

Conducting investigations into “EU frauds” in Italy depends on many specialised police bodies. It is particularly worth mentioning that in Italy, e.g. the **Judicial police officers** (*Polizia Giudiziaria*) are subordinate to the EDPs and even sit in the regional office for investigations and can thus be directly commissioned. In addition, there are other competences that can be responsible depending on which fraud fields are affected and can be commissioned if necessary. 1

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

Cf. B. 1. Article 26 mainly → above. 2


b) Instructions and assignment of investigative measures for “those national authorities”

- 3 The assignment and instruction **depends on the area** of suspected fraud. The EDPs will contact the specialised, police like customs authorities if customs duties fraud or other customs offences (smuggling etc.) is suspected and they will need to address differently specialised staff in the area of expenditure frauds (such as structural funds and projects, etc.).

National authorities:

- Public Prosecutor (e.g. National Anti-Mafia and Anti-Terrorism Directorate)
- *Guardia di finanza*, (criminal investigation unit *Polizia Giudiziaria*)
- Judicial Police
- Technical advisors for the public prosecutor
- Investigating magistrate/pre-trial investigation judge
- *Carabinieri*¹⁴⁸

- 4 This short summary cannot (completely or in-depth) depict the whole picture, but it offers with the overview of the *Guardia di Finanza* on the next page a **glimpse of the decentralization and specialisation of police (like) bodies** in the area of fraud investigations in Italy:

 *Nota bene:* The regional offices benefit of staff at the height of a Marshal of the Judicial Police (*Maresciallo ordinario*). They are used in the *Arma dei Carabinieri* as well as for the special tasks of the *Guardia di Finanza*.

¹⁴⁸ Dorascenzi 2021, pp. 101 et seq.

Figure 5: Assignment of “those national authorities” in Italy; Art. 28 EPP0 Regulation

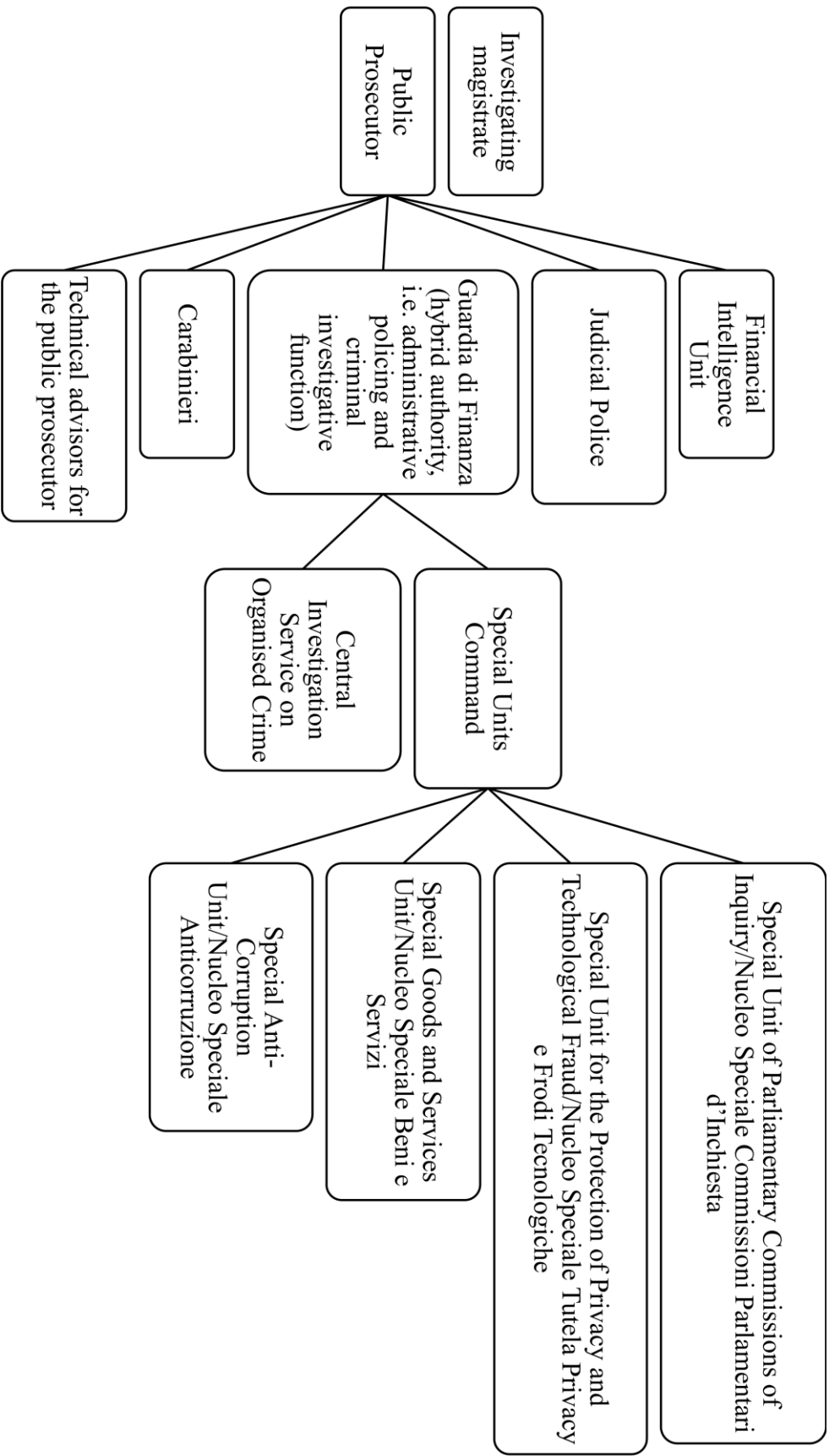
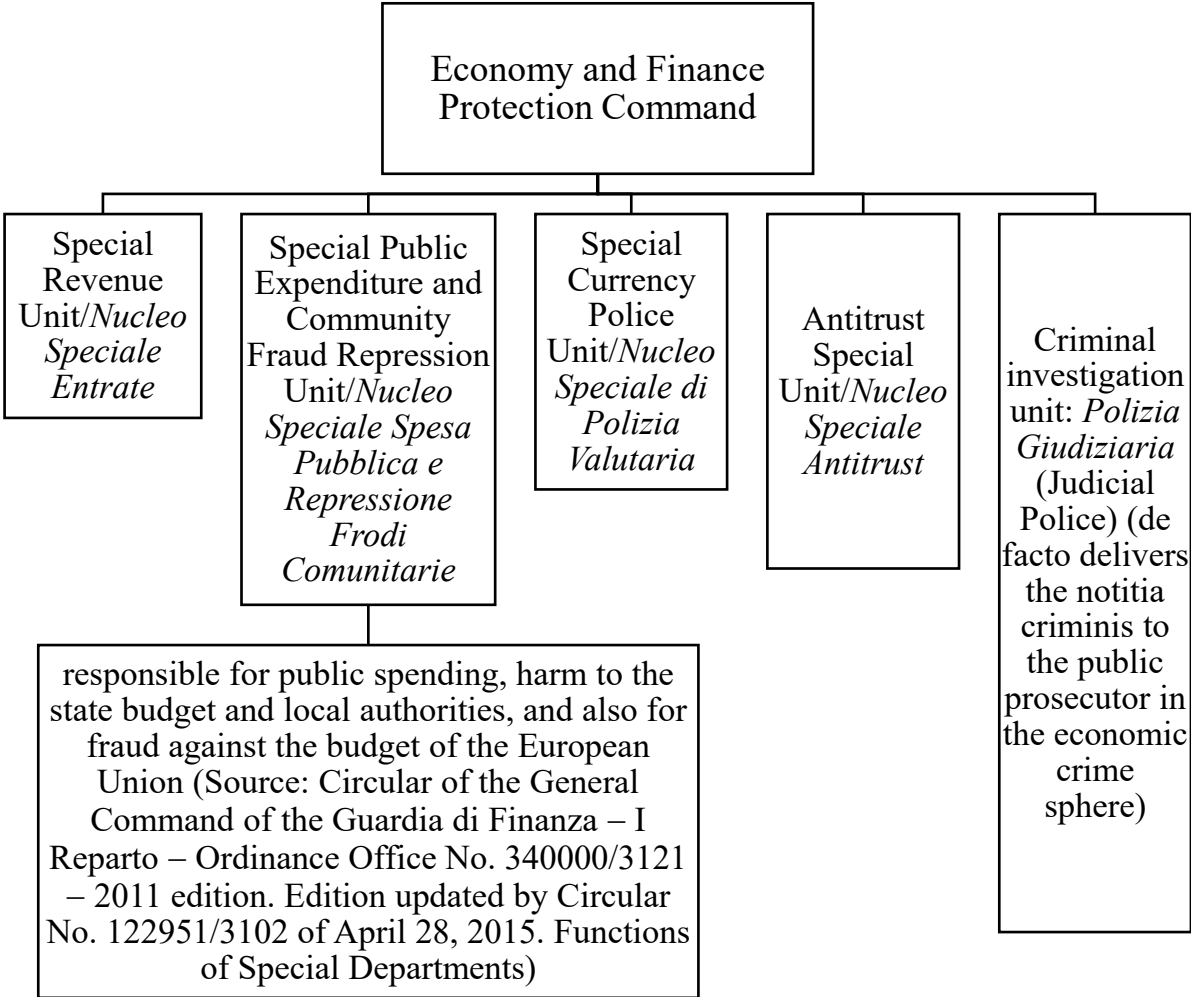


Figure 6: Organisation of the Economy and Finance Protection Command



Source: Nicolichia 2017, p. 15.

aa. Guardia di Finanza/Italian Financial Police

The *Guardia di Finanza* has an outstanding position within the Italian system of fighting fraud.¹⁴⁹ The following decrees and laws (may) apply: **6**

- Legislative Decree 300/1999 on the functioning of the Guardia di Finanza under the directions of the Ministry of Economy and Finance.
- Legislative Decree No. 68 of 19 March 2001 Adaptation of the tasks of the Guardia di Finanza Corps, pursuant to Article 4 of Law No. 78 of 31 March 2000 / *Decreto Legislativo 19 marzo 2001, n. 68 Adeguamento dei compiti del Corpo della Guardia di finanza, a norma dell'articolo 4 della legge 31 marzo 2000, n. 78.*
- Art. 50 Decree-Law No. 83 of 22 June 2012 Urgent measures for the country's growth (12G0109) / *Decreto-Legge 22 giugno 2012, n. 83 Misure urgenti per la crescita del Paese. (12G0109).*
- *Law No 526 of 21 December 1999 Provisions for the fulfilment of obligations deriving from Italy's membership of the European Communities – Community Law 1999 / Legge 21 dicembre 1999, n. 526 Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunita' europee - Legge comunitaria 1999.*

The **role of the Italian Financial Police** has been discussed in the Italian CANTONE project and *Giuseppe Zafarana*, Commander General of the *Guardia di Finanza* outlined his view on the impact of the Guardia di Finanza: **7**

“We are an economic-financial police corps entrusted with protecting not only the national budget, but also that of local authorities and the European Union. Our mission focuses not only on revenue (combating tax evasion and tax avoidance), but also on expenditure (fighting the squandering of public resources, corruption, abuse, fraud, and misappropriation of national and European funds). In light of these responsibilities, the Financial Police makes every effort to ensure that the administrative courts dealing with accounts receive the support they need as regards both jurisprudence and auditing. It provides a broad-ranging, qualified intervention system, i.e. a network of 678 territorial offices with an economic-financial police corps in every province. The corps disposes of the highly specialised equipment and staff required to perform even the most complex and multifaceted investigations. The Financial Police corps at the Prime Minister's Office is also part of the system, as is the special public expenditure and EU fraud repression corps.”

In the **area of VAT fraud**, Art. 63 of the Decree of 10/26/1972 n°633 as amended until 2022 clearly indicates that the Guardia di Finanza, which has a Liaison officer in the **8**

¹⁴⁹ Capecci 2021, pp. 97–101; already Weber 2003, pp. 157 et seq.

Ministry of Finance and the Financial Tax Department, collaborates with the administrative VAT offices e.g. to discover irregularities and fraud. Thus the *Guardia di Finanza* has a lot of **knowledge in this special area**.

“Collaboration with the Guardia di Finanza. Decree of the President of the Republic dated 10/26/1972 n. 633 – In force since 15/04/2000/Modified by: Legislative Decree of 10/03/2000 n. 74

Article 63¹⁵⁰

The Guardia di Finanza cooperates with the VAT offices for the acquisition and retrieval of useful elements for the purposes of assessing the tax and for the repression of violations of this decree, proceeding on its own initiative or at the request of the offices, according to rules and with the powers referred to in Articles 51 and 52, to the operations indicated therein and sending the relative minutes and reports to the offices themselves. Furthermore, subject to the authorisation of the judicial authority, which may also be granted by way of derogation from article 329 of the criminal procedure code, it uses and transmits to the offices documents, data and information acquired, directly or reported and obtained by other police forces, in the exercise of judicial police powers. For the purposes of the necessary coordination of the action of the financial police with that of the financial offices, agreements will be made, periodically and in cases where systematic investigations must be carried out, between the Directorate General for Taxes and Indirect Taxes on Business and the General Command of the financial police and, within the individual constituencies, between the heads of inspectorates and offices and territorial commands. The financial offices and the financial police commands, to avoid the reiteration of accesses by the same taxpayers, must give each other timely communication of the inspections and verifications undertaken. The office or command receiv-

¹⁵⁰ **Articolo 63**

Collaborazione della Guardia di Finanza.

In vigore dal 15/04/2000

Modificato da: Decreto legislativo del 10/03/2000 n. 74 Articolo 23

La Guardia di Finanza coopera con gli uffici dell'I.V.A. per l'acquisizione e il reperimento degli elementi utili ai fini dell'accertamento della imposta e per la repressione delle violazioni del presente decreto, procedendo di propria iniziativa o su richiesta degli uffici, secondo le norme e con le facoltà di cui agli artt. 51 e 52, alle operazioni ivi indicate e trasmettendo agli uffici stessi i relativi verbali e rapporti. Essa inoltre, previa autorizzazione dell'autorità giudiziaria, che può essere concessa anche in deroga all'articolo 329 del codice di procedura penale, utilizza e trasmette agli uffici documenti, dati e notizie acquisiti, direttamente o riferiti ed ottenuti dalle altre Forze di polizia, nell'esercizio dei poteri di polizia giudiziaria. Ai fini del necessario coordinamento dell'azione della guardia di finanza con quella degli uffici finanziari saranno presi accordi, periodicamente e nei casi in cui si debba procedere ad indagini sistematiche, tra la Direzione generale delle tasse e delle imposte indirette sugli affari e il Comando generale della guardia di finanza e, nell'ambito delle singole circoscrizioni, fra i capi degli ispettorati e degli uffici e i comandi territoriali. Gli uffici finanziari e i comandi della guardia di finanza, per evitare la reiterazione di accessi presso gli stessi contribuenti, devono darsi reciprocamente tempestiva comunicazione delle ispezioni e verifiche intraprese. L'ufficio o il comando che riceve la comunicazione può richiedere all'organo che sta eseguendo l'ispezione o la verifica l'esecuzione di determinati controlli e l'acquisizione di determinati elementi utili ai fini dell'accertamento.

ing the communication may request the body that is carrying out the inspection or verification to carry out certain checks and acquire certain elements useful for the purpose of the assessment.”¹⁵¹

bb. Carabinieri Commands – their role and relationship to the EPPO

The *Carabinieri*¹⁵² are a special administrative and police force and have worked already fruitfully with the EPPO in the last year in a non-procurement expenditure fraud case.¹⁵³ 9



In fact there are four different Commands that need to be distinguished, which shows that the situation is highly diverse:

- Carabinieri Command for Agri-food Protection;
- Carabinieri Command for Environmental Protection;
- Carabinieri Command for Forest Protection;
- Carabinieri Command for the Protection of Biodiversity and Parks.¹⁵⁴

In the area of funding agricultural products with EU money, the Carabinieri Command groups are competent e.g. The Carabinieri Command for Agri-Food Protection of Messina (*Comando dei Carabinieri per la Tutela Agroalimentare di Messina*) was competent to take investigative measures and gather evidence in the cited EPPO case.¹⁵⁵ The regional offices can be contacted via the address list below.¹⁵⁶ 10

¹⁵¹ Decree of the President of the Republic dated 10/26/1972 n. 633.

¹⁵² See <https://www.carabinieri.it/>. Accessed 30 June 2025.

¹⁵³ See <https://www.eppo.europa.eu/en/news/eu200-000-seized-eppo-case-fraud-agricultural-funds-italy>: “An investigation by the European Public Prosecutor’s Office (EPPO) and the Carabinieri Command for Agri-Food Protection of Messina (*Comando dei Carabinieri per la Tutela Agroalimentare di Messina*) has led to the seizure of almost €200 000 yesterday (9 March 2022). In addition, the two suspects are not allowed to carry out their business activity, or hold any managerial role, for the period of one year. In this case of non-procurement fraud of EU agricultural funds, the two suspects received payments from the Italian agricultural payments agency AGEA (*Agenzia per le erogazioni in agricoltura*) between 2015 – 2020 to cultivate their land of 180 hectares. Yet, the actual agricultural land they cultivated and owned measured less than one hectare. The two farmers claimed that they were the owners of the land, but it turned out that they falsely declared it as their land and that the actual owners were not aware of their doing.”

¹⁵⁴ See Ministry of Agricultural, Food and Forestry Policies, <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/4252>. Accessed 30 June 2025.

¹⁵⁵ Controls aim (mainly) at discovering that there is eg no evidence for the existence of the required subjective (funding) requirements (actual exercise of an agricultural activity) and thus no substantive grounds that can legitimate the funding. The applicant is therefore checked in all terms, which are allowed by law.

¹⁵⁶ **CARABINIERI COMMAND FOR AGRI-FOOD PROTECTION, Headquarters:** Via Torino, 44 00184 Rome, **Telephone :** 06487781, **Fax:** 064818534, **e-Mail:** ccpacdo@carabinieri.it, **PEC:** srm24836@pec.carabinieri.it **Operational Department, Headquarters:** via Torino, 44 - 00184 Rome **Telephone:** 06/48778, **Fax:** 06/4818534, **e-mail:** ccparosoc@carabinieri.it *Territorial jurisdiction:* National., **Carabinieri Department for the Protection of Agri-food Turin, Headquarters:** Via Grandis Sebastiano, 14 - Turin (at the Headquarters of the Torino CC Forestry Region) **Telephone:** 011/5545721, **e-mail:** 044238.002@carabinieri.it *Territorial jurisdiction:* Piedmont, Valle D’Aosta, Lombardy, Liguria., **Carabinieri Department for Agrifood Protection**

11 As Italy has a lot of coast, it is important to mention the Maritime Fishing Department of the Port Authority Corps (*Reparto Pesca Marittima del Corpo delle capitanerie di porto*) as well. They are e.g. competent to discover irregularities and fraud in respect to the Maritime Policy of the EU.

cc. Judicial police (Polizia Giudiziaria) and special audit staff

12 Special criminal audit staff does apparently not exist but the public prosecutors have access to financial experts working for the prosecutors as well as the Judicial Police (*Polizia Giudiziaria*).

13 In the area of the Italian budget that implements the allocations from the EU and is therefore partly consisting of the EU budget the *Corte dei conti* (Italian Court of Auditors) is competent to carry out financial (not criminal) audits of public Italian bodies and the Government, which is already regulated by Art. 100 of the Italian Constitution.¹⁵⁷ It reports the Italian Parliament e.g. on the management of EU funds.¹⁵⁸

dd. Supplementary investigations by the “ICQRF” – Central Inspectorate for repression of fraud

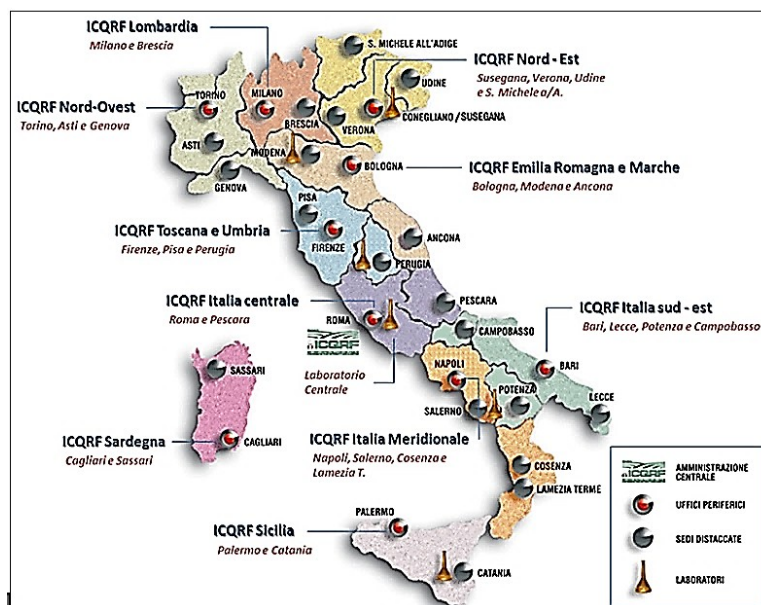
14 The ICQRF (*ICQRF-Ispettorato centrale repressione frodi*) is competent to discover irregularities in the food sector – especially it covers the area of food safety (counterfeits etc.) and is therefore although involved in fraud investigations that may have a European dimension. In the area of funding (Common Agricultural Policy) the ICQRF may be of help to the Italian EDPs, which requires that they may instruct or assign these specialised territorial offices.

Parma Headquarters: Via G. Bodoni, 2 / A - 43121 Parma, **Fax:** 0521/533802, **e-mail:** 041102.002@carabinieri.it *Territorial jurisdiction:* Veneto, Trentino Alto Adige, Friuli Venezia Giulia, Emilia Romagna. **Carabinieri Department for Food Protection Rome Headquarters:** via Torino, 44 00184 Rome **Telephone:** 06/487781, **Fax:** 06/4818534, **e-mail:** 041100.002@carabinieri.it *Territorial jurisdiction:* Tuscany, Umbria, Marche, Lazio, Sardinia. **Carabinieri Department for Agri-food Protection Salerno Headquarters:** via Duomo, 17 - 84100 Salerno **Telephone:** 089/232345 **Fax:** 089/3072173 **e-mail:** 041103.002@carabinieri.it *Territorial jurisdiction:* Campania, Abruzzo, Molise, Puglia, Basilicata. **Carabinieri Department for Food Protection Messina Headquarters :** Via Vittorio Emanuele II, 93 - 98122 Messina **Telephone :** 090715179 - 0906011365 **e-mail.**

¹⁵⁷ Corte dei conti europea, Part on Italy, in: RASSEGNA DELLE ISTITUZIONI SUPERIORI DI CONTROLLO DELL'UE E DEI SUOI STATI MEMBRI, Ufficio delle pubblicazioni dell'Unione europea, 2022, online: <https://op.europa.eu/webpub/eca/book-state-audit/it/#h-16>.

¹⁵⁸ Corte dei conti europea, Part on Italy, in: RASSEGNA DELLE ISTITUZIONI SUPERIORI DI CONTROLLO DELL'UE E DEI SUOI STATI MEMBRI, Ufficio delle pubblicazioni dell'Unione europea, 2022, online: <https://op.europa.eu/webpub/eca/book-state-audit/it/#h-16>. Accessed 31 January 2025.

Figure 7: Italian regional, territorial offices to discover fraud and irregularities in the area of food safety



Source: Ministry of Agricultural, Food and Forestry Policies, <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/9033>. Accessed 31 October 2025.

ee. Ensuring compliance with national law

(1) Via the general investigation provisions

Italian Constitution¹⁵⁹

Article 109 Italian Constitution¹⁶⁰

The legal authorities have direct use of the judicial police.

Article 50 CPC Criminal action Criminal Procedure Code [See above → Art. 27, Abatement of action (dispense with prosecution) for original text of the provision]

1. The public prosecutor shall bring criminal proceedings when there are no the conditions for a request for dismissal.
2. When no complaint, request, application or authorisation to proceed is required, the prosecution shall be exercised *ex officio*.
3. The prosecution may be suspended or interrupted only in cases expressly provided for by law.

¹⁵⁹ La Costituzione italiana, AGGIORNATO ALLA LEGGE COSTITUZIONALE 11 FEBBRAIO 2022, N. 1. English translation provided by the Senato della Repubblica – Parliamentary Information, Archives and Publications Office of the Senate Service for Official Reports and Communication.

¹⁶⁰ **Art. 109. Costituzione**

L'autorità giudiziaria dispone direttamente della polizia giudiziaria.

17 The Italian academic literature regards Art. 50 CPC as the provision that marks the **debut of the prosecutor in the national criminal justice system**.¹⁶¹

18 **Article 51 CPC¹⁶² Offices of the public prosecutor. Duties of the District Attorney**

1. The functions of public prosecutor are exercised:

a) in preliminary investigations and in first instance proceedings, by the magistrates of the public prosecutor's office at the court;

b) in appeals by the magistrates of the public prosecutor's office at the court of appeal or at the court of cassation.

2. In cases of evocation, the functions provided for in paragraph 1 letter a) are exercised by the magistrates of the public prosecutor's office at the court of appeal.

In the cases of evocation provided for in article 371-bis, they are exercised by the magistrates of the national anti-mafia and anti-terrorism directorate.

¹⁶¹ Tripodi 2021.

¹⁶² **Art. 51. Codice di Procedura Penale** Uffici del pubblico ministero. Attribuzioni del procuratore della Repubblica distrettuale

1. Le funzioni di pubblico ministero sono esercitate:

a) nelle indagini preliminari e nei procedimenti di primo grado, dai magistrati della procura della Repubblica presso il tribunale;

b) nei giudizi di impugnazione dai magistrati della procura generale presso la corte di appello o presso la corte di cassazione.

2. Nei casi di avocazione, le funzioni previste dal comma 1 lettera a) sono esercitate dai magistrati della procura generale presso la corte di appello.

Nei casi di avocazione previsti dall'articolo 371-bis, sono esercitate dai magistrati della direzione nazionale anti-mafia e antiterrorismo.

3. Le funzioni previste dal comma 1 sono attribuite all'ufficio del pubblico ministero presso il giudice competente a norma del capo II del titolo I.

3-bis. Quando si tratta dei procedimenti per i delitti, consumati o tentati, di cui agli articoli 416, sesto e settimo comma, 416, realizzato allo scopo di commettere taluno dei delitti di cui all'articolo 12, commi 1, 3 e 3-ter, del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286, 416, realizzato allo scopo di commettere delitti previsti dagli articoli 473 e 474, 600, 601, 602, 416-bis, 416-ter, 452-quaterdecies e 630 del codice penale, per i delitti commessi avvalendosi delle condizioni previste dal predetto articolo 416-bis ovvero al fine di agevolare l'attività delle associazioni previste dallo stesso articolo, nonché per i delitti previsti dall'articolo 74 del testo unico approvato con decreto del Presidente della Repubblica 9 ottobre 1990, n. 309, dall'articolo 291-quater del testo unico approvato con decreto del Presidente della Repubblica 23 gennaio 1973, n. 43, le funzioni indicate nel comma 1 lettera a) sono attribuite all'ufficio del pubblico ministero presso il tribunale del capoluogo del distretto nel cui ambito ha sede il giudice competente.

3-ter. Nei casi previsti dal comma 3-bis e dai commi 3-quater e 3-quinquies, se ne fa richiesta il procuratore distrettuale, il procuratore generale presso la corte di appello può, per giustificati motivi, disporre che le funzioni di pubblico ministero per il dibattimento siano esercitate da un magistrato designato dal procuratore della Repubblica presso il giudice competente.

3-quater. Quando si tratta di procedimenti per i delitti consumati o tentati con finalità di terrorismo le funzioni indicate nel comma 1, lettera a), sono attribuite all'ufficio del pubblico ministero presso il tribunale del capoluogo del distretto nel cui ambito ha sede il giudice competente.

3-quinquies. Quando si tratta di procedimenti per i delitti, consumati o tentati, di cui agli articoli 414-bis, 600-bis, 600-ter, 600-quater, 600-quater.1, 600-quinquies, 609-undecies, 615-ter, 615-quater, 615-quinquies, 617-bis, 617-ter, 617-quater, 617-quinquies, 617-sexies, 635-bis, 635-ter, 635-quater, 640-ter e 640-quinquies del codice penale, le funzioni indicate nel comma 1, lettera a), del presente articolo sono attribuite all'ufficio del pubblico ministero presso il tribunale del capoluogo del distretto nel cui ambito ha sede il giudice competente.

3. The functions provided for in paragraph 1 are attributed to the public prosecutor's office before the competent judge pursuant to Chapter II of Title I.

3-bis. When it comes to the proceedings for the crimes, committed or attempted, referred to in articles 416, sixth and seventh paragraphs, 416, carried out for the purpose of committing one of the crimes referred to in article 12, paragraphs 1, 3 and 3-ter, of the consolidated text of the provisions concerning the immigration discipline and rules on the condition of the foreigner, referred to in the Legislative Decree 25 July 1998, n. 286, 416, carried out for the purpose of committing crimes provided for in articles 473 and 474, 600, 601, 602, 416-bis, 416-ter, 452-quaterdecies and 630 of the criminal code, for crimes committed making use of the conditions provided for by the aforementioned article 416-bis or in order to facilitate the activities of the associations envisaged by the same article, as well as for the crimes envisaged by article 74 of the consolidated act approved by decree of the President of the Republic 9 October 1990, n. 309, by article 291-quater of the consolidated act approved by decree of the President of the Republic of 23 January 1973, n. 43, the functions indicated in paragraph 1 letter a) are attributed to the public prosecutor's office at the court of the capital of the district in which the competent judge is based.

3-ter. In the cases provided for by paragraph 3-bis and paragraphs 3-quater and 3-quinquies, if requested by the district attorney, the attorney general at the court of appeal may, for justified reasons, order that the functions of public prosecutor for the trial are exercised by a magistrate appointed by the public prosecutor before the competent judge.

3-quater. When it comes to proceedings for crimes committed or attempted for the purpose of terrorism, the functions indicated in paragraph 1, letter a), are attributed to the public prosecutor's office at the court of the district capital in which the competent judge is based.

3-quinquies. When it comes to proceedings for the crimes, committed or attempted, referred to in articles 414-bis, 600-bis, 600-ter, 600-quater, 600-quater.1, 600-quinquies, 609-undecies, 615-ter, 615-quater, 615-quinquies, 617-bis, 617-ter, 617-quater, 617-quinquies, 617-sexies, 635-bis, 635-ter, 635-quater, 640-ter and 640-quinquies of the code criminal, the functions indicated in paragraph 1, letter a) of this article are attributed to the public prosecutor's office at the court of the capital of the district in which the competent judge is based.

Article 52 CPC¹⁶³ Abstention

1. The magistrate of the public prosecutor has the faculty to abstain when there are serious reasons of convenience.
2. The chief public prosecutor at the court and the general prosecutor decide on the declaration of abstention within their respective offices.
3. The Attorney General at the Court of Appeal and the Attorney General at the Court of Cassation decide, respectively, on the declaration of abstention by the chief Public Prosecutor at the Court and the Attorney General at the Court of Appeal.
4. With the provision that accepts the declaration of abstention, the abstained public prosecutor is replaced by another public prosecutor belonging to the same office. Nevertheless, when the declaration of abstention of the chief public prosecutor at the court and of the general prosecutor at the court of appeal is accepted, another magistrate of the public prosecutor belonging to the equally competent office determined in accordance with Article 11 may be appointed to replace them.

- 19** In Italian legal doctrine, Article 50 CPC is seen as the point where the public prosecutor formally enters the criminal justice process. Articles 51–52 CPC defined the allocation of prosecutorial functions across court levels and specialised jurisdictions, and set out rules for a prosecutor’s abstention and replacement where serious reasons of convenience exist.

¹⁶³ **Art. 52. Codice di Procedura Penale** Astensione.

1. Il magistrato del pubblico ministero ha la facoltà di astenersi quando esistono gravi ragioni di convenienza.
2. Sulla dichiarazione di astensione decidono, nell’ambito dei rispettivi uffici, il procuratore della Repubblica presso il tribunale e il procuratore generale.
3. Sulla dichiarazione di astensione del procuratore della Repubblica presso il tribunale e del procuratore generale presso la corte di appello decidono, rispettivamente, il procuratore generale presso la corte di appello e il procuratore generale presso la corte di cassazione.
4. Con il provvedimento che accoglie la dichiarazione di astensione, il magistrato del pubblico ministero astenuto è sostituito con un altro magistrato del pubblico ministero appartenente al medesimo ufficio. Nondimeno, quando viene accolta la dichiarazione di astensione del procuratore della Repubblica presso il tribunale e del procuratore generale presso la corte di appello, può essere designato alla sostituzione altro magistrato del pubblico ministero appartenente all’ufficio ugualmente competente determinato a norma dell’articolo 11.

Article 53 CPC¹⁶⁴ Autonomy of the public prosecutor in the hearing. Replacement cases

1. In the hearing, the magistrate of the public prosecutor exercises his functions with full autonomy.
2. The head of the office provides for the replacement of the magistrate in cases of serious impediment, significant service requirements and in those provided for by article 36 paragraph 1 letters a), b), d), e). In other cases, the magistrate can be replaced only with his consent.
3. When the head of the office fails to provide for the replacement of the magistrate in the cases provided for in article 36 paragraph 1 letters a), b), d), e), the attorney general at the court of appeal designates for the hearing a magistrate belonging to his office.
[...]

Article 54-ter CPC¹⁶⁵ Contrasts between prosecutors in the field of organized crime

1. When the contrast provided for in articles 54 and 54bis concerns one of the crimes indicated in article 51, paragraphs 3-bis and 3-quater, if the decision rests with the attorney general at the court of cassation, he shall decide after hearing the national anti-mafia and counter-terrorism prosecutor; if it is up to the Attorney General at the Court of Appeal, he informs the National Anti-Mafia and Counter-Terrorism Prosecutor of the measures adopted.

Article 55 CPC¹⁶⁶ Functions of the judicial police

1. The judicial police must, even on their own initiative, take notice of the crimes, prevent them from being brought to further consequences, search for their perpetrators, take

¹⁶⁴ **Art. 53. Codice di Procedura Penale** Autonomia del pubblico ministero nell'udienza. Casi di sostituzione.

1. Nell'udienza, il magistrato del pubblico ministero esercita le sue funzioni con piena autonomia.
2. Il capo dell'ufficio provvede alla sostituzione del magistrato nei casi di grave impedimento, di rilevanti esigenze di servizio e in quelli previsti dall'articolo 36 comma 1 lettere a), b), d), e). Negli altri casi il magistrato può essere sostituito solo con il suo consenso.
3. Quando il capo dell'ufficio omette di provvedere alla sostituzione del magistrato nei casi previsti dall'articolo 36 comma 1 lettere a), b), d), e), il procuratore generale presso la corte di appello designa per l'udienza un magistrato appartenente al suo ufficio.

¹⁶⁵ **Art. 54-ter. Codice di Procedura Penale** Contrasti tra pubblici ministeri in materia di criminalità organizzata.

1. Quando il contrasto previsto dagli articoli 54 e 54bis riguarda taluno dei reati indicati nell'articolo 51, commi 3-bis e 3-quater, se la decisione spetta al procuratore generale presso la corte di cassazione, questi provvede sentito il procuratore nazionale antimafia e antiterrorismo; se spetta al procuratore generale presso la corte di appello, questi informa il procuratore nazionale antimafia e antiterrorismo dei provvedimenti adottati.

¹⁶⁶ **TITOLO III**

Polizia giudiziaria**Art. 55. Codice di Procedura Penale** Funzioni della polizia giudiziaria.

1. La polizia giudiziaria deve, anche di propria iniziativa, prendere notizia dei reati, impedire che vengano portati a conseguenze ulteriori, ricercarne gli autori, compiere gli atti necessari per assicurare le fonti di prova e raccogliere quant'altro possa servire per l'applicazione della legge penale.
2. Svolge ogni indagine e attività disposta o delegata dall'autorità giudiziaria.
3. Le funzioni indicate nei commi 1 e 2 sono svolte dagli ufficiali e dagli agenti di polizia giudiziaria.

the necessary steps to ensure the sources of evidence and collect anything else that can be used for the application of the criminal law.

2. It carries out all investigations and activities ordered or delegated by the judicial authority.

3. The functions indicated in paragraphs 1 and 2 are performed by judicial police officers and agents.

Article 56 CPC¹⁶⁷ Services and sections of the judicial police

1. The judicial police functions are carried out to the dependencies and under the direction of the judicial authority:

a) by the judicial police services provided for by law;

b) by the judicial police sections set up at each public prosecutor's office and made up of personnel from the judicial police services;

c) by judicial police officers and agents belonging to other bodies which the law requires to carry out investigations following a crime report.

Article 57 CPC¹⁶⁸ Officers and agents of the judicial police

1. Without prejudice to the provisions of special laws, judicial police officers are:

a) managers, commissioners, inspectors, superintendents and other members of the state police to whom the public security system recognizes this quality;

b) senior and lower officers and non-commissioned officers of the carabinieri, the financial police, custodians (2) and the state forestry corps as well as others belonging to the

¹⁶⁷ **Art. 56. Codice di Procedura Penale** Servizi e sezioni di polizia giudiziaria.

1. Le funzioni di polizia giudiziaria sono svolte alla dipendenza e sotto la direzione dell'autorità giudiziaria:

a) dai servizi di polizia giudiziaria previsti dalla legge;

b) dalle sezioni di polizia giudiziaria istituite presso ogni procura della Repubblica e composte con personale dei servizi di polizia giudiziaria;

c) dagli ufficiali e dagli agenti di polizia giudiziaria appartenenti agli altri organi cui la legge fa obbligo di compiere indagini a seguito di una notizia di reato.

¹⁶⁸ **Art. 57. Codice di Procedura Penale** Ufficiali e agenti di polizia giudiziaria.

1. Salve le disposizioni delle leggi speciali, sono ufficiali di polizia giudiziaria:

a) i dirigenti, i commissari, gli ispettori, i sovrintendenti e gli altri appartenenti alla polizia di Stato ai quali l'ordinamento dell'amministrazione della pubblica sicurezza riconosce tale qualità;

b) gli ufficiali superiori e inferiori e i sottufficiali dei carabinieri, della guardia di finanza, degli agenti di custodia (2) e del corpo forestale dello Stato nonché gli altri appartenenti alle predette forze di polizia ai quali l'ordinamento delle rispettive amministrazioni riconosce tale qualità;

c) il sindaco dei comuni ove non abbia sede un ufficio della polizia di Stato ovvero un comando dell'arma dei carabinieri o della guardia di finanza.

2. Sono agenti di polizia giudiziaria:

a) il personale della polizia di Stato al quale l'ordinamento dell'amministrazione della pubblica sicurezza riconosce tale qualità;

b) i carabinieri, le guardie di finanza, gli agenti di custodia (2), le guardie forestali e, nell'ambito territoriale dell'ente di appartenenza, le guardie delle province e dei comuni quando sono in servizio (1).

3. Sono altresì ufficiali e agenti di polizia giudiziaria, nei limiti del servizio cui sono destinate e secondo le rispettive attribuzioni, le persone alle quali le leggi e i regolamenti attribuiscono le funzioni previste dall'articolo 55.

aforementioned police forces to whom the respective administrations' legal system recognizes this quality;

c) the mayor of municipalities where a state police office or a command of the carabinieri or the finance police is not based.

2. They are judicial police officers:

a) State police personnel to whom the public security system recognizes this quality;

b) the carabinieri, the financial police, the custodians (2), the forest guards and, within the territorial area of the body they belong to, the guards of the provinces and municipalities when they are on duty (1).

3. Judicial police officers and agents are also, within the limits of the service to which they are intended and according to their respective powers, the persons to whom the laws and regulations attribute the functions provided for in article 55.

(1) In accordance with Art. 1, paragraph 113, Law 7 April 2014, n. 56, the provisions referred to in this letter, relating to the exercise of judicial police functions in the territorial area to which the municipal police personnel belong, are understood to refer, in the event of associated exercise of municipal police functions through a union of municipalities, to the territory of the municipalities in which the union exercises the same functions.

(2) The Corps of Custody Officers was dissolved and replaced with the Penitentiary Police Corps, as a result of Law no. 395/1990.

Article 58 CPC¹⁶⁹ Availability of the judicial police

1. Each public prosecutor has its own section; the attorney general at the court of appeal has all the sections set up in the district.

2. The judicial police activities for the district judges are carried out by the section established at the corresponding public prosecutor's office.

3. The judicial authority directly makes use of the staff of the sections in accordance with paragraphs 1 and 2 and may also make use of any service or other judicial police-body.

¹⁶⁹ **Art. 58. Codice di Procedura Penale** Disponibilità della polizia giudiziaria.

1. Ogni procura della Repubblica dispone della rispettiva sezione; la procura generale presso la corte di appello dispone di tutte le sezioni istituite nel distretto.

2. Le attività di polizia giudiziaria per i giudici del distretto sono svolte dalla sezione istituita presso la corrispondente procura della Repubblica.

3. L'autorità giudiziaria si avvale direttamente del personale delle sezioni a norma dei commi 1 e 2 e può altresì avvalersi di ogni servizio o altro organo di polizia giudiziaria.

Article 59 CPC¹⁷⁰ Subordination of the judicial police

1. The judicial police sections depend on the magistrates who direct the offices in which they are established.
2. The officer in charge of the judicial police services is responsible to the public prosecutor at the court where the judicial police service carried out by himself and by the employees is based.
3. The officers and agents of the judicial police are required to perform the tasks entrusted to them relating to the functions referred to in Article 55, paragraph 1. The members of the sections may not be deterred from the activity of the judicial police if not by order of the magistrate on whom they depend in accordance with paragraph 1.

Second Part

Book V Preliminary Investigations And Preliminary Hearing

Title I General Provisions

Article 326 CPC¹⁷¹ Purpose of preliminary investigations

1. The public prosecutor and the judicial police shall carry out within the scope of their respective powers, the investigations necessary for the determinations inherent in the exercise of criminal prosecution.

Article 327 CPC¹⁷² Direction of preliminary investigations

1. The public prosecutor directs the investigation and disposes directly the judicial police who, even after the communication of the crime, continues to carry out activities on its own initiative according to the modalities indicated in the following articles.

¹⁷⁰ **Art. 59. Codice di Procedura Penale** Subordinazione della polizia giudiziaria.

1. Le sezioni di polizia giudiziaria dipendono dai magistrati che dirigono gli uffici presso i quali sono istituite.
2. L'ufficiale preposto ai servizi di polizia giudiziaria è responsabile verso il procuratore della Repubblica presso il tribunale dove ha sede il servizio dell'attività di polizia giudiziaria svolta da lui stesso e dal personale dipendente.
3. Gli ufficiali e gli agenti di polizia giudiziaria sono tenuti a eseguire i compiti a essi affidati inerenti alle funzioni di cui all'articolo 55, comma 1. (1) Gli appartenenti alle sezioni non possono essere distolti dall'attività di polizia giudiziaria se non per disposizione del magistrato dal quale dipendono a norma del comma 1.

¹⁷¹ **PARTE SECONDA**

Libro V INDAGINI PRELIMINARI E UDIENZA PRELIMINARE

Titolo I DISPOSIZIONI GENERALI

Art. 326. Codice di Procedura Penale Finalità delle indagini preliminari

1. Il pubblico ministero e la polizia giudiziaria svolgono, nell'ambito delle rispettive attribuzioni, le indagini necessarie per le determinazioni inerenti all'esercizio dell'azione penale.

¹⁷² **Art. 327. Codice di Procedura Penale** Direzione delle indagini preliminari

1. Il pubblico ministero dirige le indagini e dispone direttamente della polizia giudiziaria (che, anche dopo la comunicazione della notizia di reato, continua a svolgere attività di propria iniziativa secondo le modalità indicate nei successivi articoli.)

Article 328 CPC¹⁷³ Judge for Preliminary Investigations

1. In cases provided for by law, on the requests of the public prosecutor, private parties and the person offended by the crime, the judge for preliminary investigations shall decide.

1-bis. When it concerns proceedings for the offences indicated in Article 51 paragraphs 3-bis and 3-quater, the functions of the judge for preliminary investigations are exercised, except for specific provisions of law, by a magistrate of the court of the capital of the district in which the competent judge has his seat. (111)

1-ter (repealed)

1-quater. When dealing with proceedings for the offences indicated in Article 51, paragraph 3-quinquies, the functions of judge for preliminary investigations and the functions of judge for the preliminary hearing shall be exercised, subject to specific provisions of law by a magistrate of the court of the capital of the district in which the competent judge is sitting.

Update (111)

Decree-Law No. 82 of 7 April 2000, converted with amendments by L. 5 June 2000, no. 144 provided (with Art. 4-bis, paragraph 1) that “The provision of Article 328, paragraph 1-bis, of the Code of criminal procedure must be interpreted as meaning that when it concerns proceedings for the offences indicated in Article 51, paragraph 3-bis, of the Code of Criminal Procedure, also the functions of judge for the preliminary hearing are exercised by a magistrate of the court of the capital of the district in which the competent judge’ has his seat.

Article 330 CPC¹⁷⁴ Acquisition of reports of offences

1. The public prosecutor and the judicial police shall take cognizance of offences on their own initiative and receive reports of offences submitted or forwarded in accordance with the following articles.

¹⁷³ **Art. 328 Codice di Procedura Penale** Giudice per le indagini preliminari

1. Nei casi previsti dalla legge, sulle richieste del pubblico ministero, delle parti private e della persona offesa dal reato, provvede il giudice per le indagini preliminari.

1-bis. Quando si tratta di procedimenti per i delitti indicati nell’articolo 51 (commi 3-bis e 3-quater,) le funzioni di giudice per le indagini preliminari sono esercitate, salve specifiche disposizioni di legge, da un magistrato del tribunale del capoluogo del distretto nel cui ambito ha sede il giudice competente. (111)

1-ter (COMMA ABROGATO DAL D.L. 23 MAGGIO 2008, N. 92 CONVERTITO CON MODIFICAZIONI DALLA L. 24 LUGLIO 2008, N. 125).

(1-quater. Quando si tratta di procedimenti per i delitti indicati nell’articolo 51, comma 3-quinquies, le funzioni di giudice per le indagini preliminari e le funzioni di giudice per l’udienza preliminare sono esercitate, salve specifiche disposizioni di legge, da un magistrato del tribunale del capoluogo del distretto nel cui ambito ha sede il giudice competente.)

¹⁷⁴ **Art. 330. Codice di Procedura Penale** Acquisizione delle notizie di reato

1. Il pubblico ministero e la polizia giudiziaria prendono notizia dei reati di propria iniziativa e ricevono le notizie di reato presentate o trasmesse a norma degli articoli seguenti.

Title IV Activities At The Initiative Of The Judicial Police

Article 347 CPC Obligation to report the crime

See above → Article 27 Right of Criminal complaint.

Title V Activities Of The Public Prosecutor

Article 358 CPC¹⁷⁵ Activities of investigation of the public prosecutor

1. The public prosecutor carries out all activities necessary for the purposes indicated in article 326 and also carries out investigations on facts e circumstances in favour of the person under investigation.

Article 359 CPC¹⁷⁶ Technical advisors to the public prosecutor

1. The public prosecutor, when he proceeds to investigations, identification, descriptive or photographic findings and to any other technical operation for which specific skills are needed, can nominate and make use of consultants, who cannot refuse their work.
2. The consultant may be authorised by the public prosecutor to attend individual investigative acts.



Art. 359 CPC is a very specific provision and enables especially in the digital age unseen possibilities for the EDPs. In the **age of AI**, which is available for criminals to forge documents etc.¹⁷⁷ and systematic searches of digitally stored information prosecutors cannot make enough use of Art. 359 CPC and get **information by technical advisors**. Italian prosecution offices have lists of typically engaged persons, but the EDPs are independent and can therefore, if the costs are calculated and the Legal Service of the EPPO as well as the EP of Italy are okay with the decision of the EDP contact external advisors.¹⁷⁸

¹⁷⁵ **Titolo V ATTIVITA' DEL PUBBLICO MINISTERO**

Art. 358. Codice di Procedura Penale Attivita' di indagine del pubblico ministero

1. Il pubblico ministero compie ogni attivita' necessaria ai fini indicati nell'articolo 326 e svolge altresì accertamenti su fatti e circostanze a favore della persona sottoposta alle indagini.

¹⁷⁶ **Art. 359. Codice di Procedura Penale** Consulenti tecnici del pubblico ministero

1. Il pubblico ministero, quando procede ad accertamenti, rilievi segnaletici, descrittivi o fotografici e ad ogni altra operazione tecnica per cui sono necessarie specifiche competenze, puo' nominare e avvalersi di consulenti, che non possono rifiutare la loro opera.

2. Il consulente puo' essere autorizzato dal pubblico ministero ad assistere a singoli atti di indagine.

¹⁷⁷ See Rawat/Telang et al. 2025, p. 171 et seq.

¹⁷⁸ See for the civil law practice, which is equal <https://experts-institute.eu/wp-content/uploads/2019/03/II-CTU-nel-processo-civile-italiano-Firenze-10-aprile-2024-Versione-lingua-inglese.pdf>. Accessed 31 December 2025.

Article 370 CPC Direct and Delegated Acts

[See above → Article 26 Initiation of investigations, Relevant sources of the indications for a criminal offense falling within the competence of the EPPO for original text of the provision]

1. The public prosecutor shall personally carry out any investigation. He may have recourse to the judicial police for the performance of investigative activities and specifically delegated acts, including interrogations and confrontations in which the person under investigation who is in a state of liberty participates, with the necessary assistance of a defence counsel.

2. When proceeding in accordance with paragraph 1, the judicial police shall observe the provisions of Articles 364, 365 and 373.

2-bis. If it concerns (the offence provided for in Article 575 of the Criminal Code, in the form of an attempt, or of one of the offences, whether committed or attempted,) provided for in Articles 364, 365 and 374. attempted,) provided for in Articles 572, 609-bis, 609-ter, 609-quater, 609-quinquies, 609-octies, 612-bis and 612-ter of the Penal Code or by Articles 582 and 583-quinquies of the Penal Code in cases of aggravated cases pursuant to Articles 576, first paragraph, numbers 2, 5, 5.1, and 577, first paragraph, number 1, and second paragraph, of the same Code, the judicial police shall proceed without delay to perform the acts delegated by the public prosecutor.

2-ter. In the cases referred to in paragraph 2-bis, the judicial police shall place without delay at the disposal of the public prosecutor the documentation of the activity in the form and manner provided for in Article 357.

3. For individual acts to be taken in the jurisdiction of another court, the public prosecutor, if he does not consider to proceed personally, may delegate, in accordance with their respective competence in the subject matter, the public prosecutor at the local court.

4. When reasons of urgency or other serious grounds exist, the public prosecutor delegated pursuant to paragraph 3 shall be entitled to proceed on its own initiative also to the acts that following the performance of those specifically delegated appear necessary for the purposes of the investigation.

The police has a **sphere of “autonomous” action**, cf. Art. 348 para. 3 CPP alike to the German police under s. 152 GVG. The police is considered to have wide discretion due to its experience in the technically challenging and complex field of economic and tax-related crimes. It may also already have functioned in an administrative investigation of the same facts previous to the criminal investigation procedure. Due to this, the police can take broad initiatives. The public prosecutor may give vague and generic authorisations due to this (though no blank cheques). The prosecutor may then grant broad powers

to the police and will mostly only be requested for authorisations that are needed to carry out investigative measures.¹⁷⁹

(2) Via national administrative decrees/regulations under criminal procedural law

(a) Italy: Regulations for the Implementation of the Code of Criminal Procedure

22 Decree No 334 of 30 September 1989

Article 14¹⁸⁰

In the course of the preliminary investigations, proceedings may be carried out even on public holidays.

23 Royal Decree 30 January 1941, n. 12 - Judicial System¹⁸¹

Title Three The Public Prosecutor

Chapter I On the Establishment of the Public Prosecutor

Article 69¹⁸² Functions of the public prosecutor

The public prosecutor exercises, under the direction of the Minister of grace and justice, the functions that the law attributes to him.

Article 70 Constitution of the public prosecutor

1.¹⁸³ The functions of the public prosecutor are exercised by the attorney general at the court of cassation, by the prosecutors generals of the Republic at the courts of appeal,

¹⁷⁹ Nicolicchia 2017, p. 23.

¹⁸⁰ **Art. 14.**

Nel corso delle indagini preliminari possono essere compiuti atti del procedimento anche nei giorni festivi.

¹⁸¹ REGIO DECRETO 30 gennaio 1941, n. 12 Ordinamento giudiziario. (041U0012).

¹⁸² **Art. 69. Funzioni del pubblico ministero.**

Il pubblico ministero esercita, sotto la direzione del Ministro di grazia e giustizia, le funzioni che la legge gli attribuisce.

¹⁸³ **Titolo Terzo Del Pubblico Ministero**

Capo I. Della costituzione del pubblico ministero.

Art. 70. Costituzione del pubblico ministero.

1. Le funzioni del pubblico ministero sono esercitate dal procuratore generale presso la corte di cassazione, dai procuratori generali della Repubblica presso le corti di appello, dai procuratori della Repubblica presso i tribunali per le persone, per i minorenni e per le famiglie e dai procuratori della Repubblica presso i tribunali ordinari. Negli uffici delle procure della Repubblica presso i tribunali ordinari possono essere istituiti posti di procuratore aggiunto in numero non superiore a quello risultante dalla proporzione di un procuratore aggiunto per ogni dieci sostituti addetti all'ufficio. Negli uffici delle procure della Repubblica presso il tribunale del capoluogo del distretto può essere comunque istituito un posto di procuratore aggiunto per specifiche ragioni riguardanti lo svolgimento dei compiti della direzione distrettuale antimafia. (109)(110a)

2. Presso le sezioni distaccate di corte di appello le funzioni del procuratore generale sono esercitate dall'avvocato generale, a norma dell'articolo 59.

3. I titolari degli uffici del pubblico ministero dirigono l'ufficio cui sono preposti, ne organizzano l'attività ed esercitano personalmente le funzioni attribuite al pubblico ministero dal codice di procedura penale e dalle altre

by the prosecutors of the Republic before the courts for persons, minors and family and by the prosecutors of the Republic before the ordinary courts. In the offices of public prosecutors in ordinary courts can be instituted posts of adjunct prosecutor established in a number not exceeding that resulting from the proportion of one deputy attorney per every ten substitutes employed in the office. In the prosecutor's offices of the Republic at the court of the capital of the district can however, be instituted an adjunct prosecutor's post for specific reasons concerning the performance of the tasks of the District Anti-Mafia Directorate.

2. At the detached sections of the Court of Appeal the functions of the Attorney General are exercised by the Advocate General, in accordance with Article 59.

3. The holders of the public prosecutor's offices direct the office to which they are in charge, organize its activity and exercise personally the functions attributed to the public prosecutor by the code of criminal procedure and other laws, when they do not designate others office magistrates. More than one magistrate can be designated in consideration of the number of defendants or of the complexity of the investigation or trial.

4. During the criminal hearings, the designated magistrate carries out the functions of the public prosecutor with full autonomy and can be replaced only in the cases provided for by the criminal procedure code. The office holder transmits to the High Council of the Judiciary copy of the motivated provision with which it ordered the replacement of the magistrate.

5. Any magistrate attached to a public prosecutor's office who, outside the exercise of his duties, is nevertheless aware of facts that could determine the commencement of the criminal action or of preliminary investigations, can report them in writing to the appointed magistrate of the office. He, when the conditions for the dismissal request do not apply and he does not intend to proceed personally, designates one or more magistrates for dealing with the case.

leggi, quando non designino altri magistrati addetti all'ufficio. Possono essere designati piu' magistrati in considerazione del numero degli imputati o della complessita' delle indagini o del dibattimento.

4. Nel corso delle udienze penali, il magistrato designato svolge le funzioni del pubblico ministero con piena autonomia e puo' essere sostituito solo nei casi previsti dal codice di procedura penale. Il titolare dell'ufficio trasmette al Consiglio superiore della magistratura copia del provvedimento motivato con cui ha disposto la sostituzione del magistrato.

5. Ogni magistrato addetto ad una procura della Repubblica, che, fuori dell'esercizio delle sue funzioni, viene comunque a conoscenza di fatti che possano determinare l'inizio dell'azione penale o di indagini preliminari, puo' segnalarli per iscritto al titolare dell'ufficio. Questi, quando non sussistono i presupposti per la richiesta di archiviazione e non intende procedere personalmente, provvede a designare per la trattazione uno o piu' magistrati dell'ufficio.

6. Quando il procuratore nazionale antimafia o il procuratore generale presso la corte di appello dispone l'avocazione delle indagini preliminari nei casi previsti dalla legge, trasmette copia del relativo decreto motivato al Consiglio superiore della magistratura e ai procuratori della Repubblica interessati. (98)

6-bis. Entro dieci giorni dalla ricezione del provvedimento di avocazione, il procuratore della Repubblica interessato puo' proporre reclamo al procuratore generale presso la Corte di cassazione. Questi, se accoglie il reclamo, revoca il decreto di avocazione, disponendo la restituzione degli atti.

6. When the national anti-mafia prosecutor or prosecutor general at the court of appeal orders the invocation of the preliminary investigations in the cases provided for by law, send a copy of the related decree motivated to the High Council of the judiciary and the public prosecutors concerned.

6-bis. Within ten days of receipt of the provision of evocation, the public prosecutor concerned can propose complaint to the Attorney General at the Court of Cassation. If he accepts the complaint, he revokes the decree of evocation, ordering the return of the documents.

24 Article 14 of Decree No. 334/1989 permits investigative acts **during preliminary investigations** to be carried out even on public holidays, ensuring procedural continuity. Under the Royal Decree of 30 January 1941 (Judicial System), Articles 69–70 define the structure and functions of the public prosecutor: the office is exercised by the Attorney General at the Court of Cassation, prosecutors general at courts of appeal, prosecutors for minors, and prosecutors before ordinary courts.

25 Office holders direct and organise prosecutorial activity, may designate other magistrates based on case complexity, and ensure autonomy in hearings. Special provisions govern deputy prosecutor posts, procedures for replacing magistrates, internal reporting of offences, and the process for recalling investigations in anti-mafia and other designated cases, including a right of complaint to the Attorney General at the Court of Cassation within ten days.

26 **Article 73¹⁸⁴ General powers of the public prosecutor**

The public prosecutor watches over the observance of the laws, the prompt and regular administration of justice, for the protection of rights of the state, legal persons and incapacitated persons, requesting, in cases of urgency, the precautionary measures that deems necessary;

promotes the repression of crimes and the application of measures safety;

has the judges and any other provision of the judge executed, in the cases established by law.

It also has direct action to enforce and observe the laws of public order and affecting the rights of the State, and for the protection of the corporate order, provided that such action is not from law attributed to other bodies.

¹⁸⁴ **Art. 73. Attribuzioni generali del pubblico ministero.**

Il pubblico ministero veglia alla osservanza delle leggi, alla pronta e regolare amministrazione della giustizia, alla tutela dei diritti dello Stato, delle persone giuridiche e degli incapaci, richiedendo, nei casi di urgenza, i provvedimenti cautelari che ritiene necessari;

promuove la repressione dei reati e l'applicazione delle misure di sicurezza;

fa eseguire i giudicati ed ogni altro provvedimento del giudice, nei casi stabiliti dalla legge.

Ha pure azione diretta per fare eseguire ed osservare le leggi d'ordine pubblico e che interessano i diritti dello Stato, e per la tutela dell'ordine corporativo, sempre che tale azione non sia dalla legge ad altri organi attribuita.

Article 74¹⁸⁵ Duties of the public prosecutor in criminal matters

The prosecutor initiates and exercises criminal prosecution.

A representative of the public prosecutor intervenes at all criminal hearings of courts and ordinary tribunals. In the absence of his intervention, the hearing cannot take place. The attributions of the public prosecutor in the preliminary acts of trial and in the hearings of the assize court belong to the attorney general of the Republic at the court of appeal, who exercises them personally or through another magistrate assigned to his office.

The Attorney General, in the constituency of the court of appeal, designates the public magistrate's magistrates who must attend the hearings, delegating, if it is necessary, the public prosecutor of the Republic or a substitute at the ordinary court of the seat where the assize court is convened.

The rule of the preceding paragraph also applies to the hearings of courts of assizes held in the constituency of a seat seconded to the court of appeal.

Legislative Decree 19 March 2001, n. 68**Article 2 Budget protection**

1. Without prejudice to the tasks envisaged by article 1 of the law 23 April 1959, n. 189, and by other laws and regulations in force, the Corps of the Guardia di Finanza performs the functions of the economic and financial police for the protection of the public budget, of the regions, local authorities and the European Union.

2. To this end, they are delegated to the Guardia di Finanza tasks of prevention, investigation and repression of violations in matter of:

a) direct and indirect taxes, taxes, contributions, fiscal monopolies and any other tax, whether of a tax or local nature;

27

¹⁸⁵ Art. 74. Attribuzioni del pubblico ministero in materia penale.

Il pubblico ministero inizia ed esercita l'azione penale.

Un rappresentante del pubblico ministero interviene a tutte le udienze penali delle corti e dei tribunali ordinari. In mancanza del suo intervento, l'udienza non puo' aver luogo. (109)(110a)

Le attribuzioni del pubblico ministero negli atti preliminari del giudizio e nelle udienze della corte d'assise spettano al procuratore generale del Re Imperatore presso la corte d'appello, il quale le esercita personalmente o per mezzo di altro magistrato addetto al suo ufficio.

Il procuratore generale, nella circoscrizione della corte di appello, provvede alla designazione dei magistrati del pubblico ministero che debbono intervenire alle udienze, delegando, se occorre, il procuratore del Re Imperatore o un sostituto presso il tribunale ordinario della sede dove e' convocata la corte d'assise.

La norma del comma precedente si applica anche per le udienze di corte d'assise che si tengono nella circoscrizione di una sede distaccata di corte d'appello.

AGGIORNAMENTO (109)

Il D.Lgs. 19 febbraio 1998, n. 51, ha disposto (con l'Art. 247, comma 1) che la presente modifica diventa efficace decorso il termine stabilito dall'articolo 1, comma 1, lettera r), della legge 16 luglio 1997, n. 254, fatta eccezione per le disposizioni previste dagli articoli 17, 33, comma 1, 38, comma 1 e 40, commi 1 e 3.

AGGIORNAMENTO (110a)

Il D.Lgs. 19 febbraio 1998, n. 51, come modificato dalla L. 16 giugno 1998, n. 188, ha disposto (con l'Art. 247, comma 1) che "Il presente decreto legislativo entra in vigore il giorno successivo alla sua pubblicazione nella Gazzetta Ufficiale della Repubblica italiana e diventa efficace a decorrere dal 2 giugno 1999, fatta eccezione per le disposizioni previste dagli articoli 17, 33, comma 1, 38, comma 1 e 40, commi 1 e 3".

- b) customs duties, border duties and other own resources as well as expenditure of the European Union budget;
- c) any other tax revenue, also of a sanctioning nature or of a different nature, attributable to the tax authorities or locally;
- d) management activities carried out by private subjects under the regime concession, to carry out public functions inherent to the administrative power of taxation;
- e) public resources and financial means used to cover expenses the public budget as well as public spending programs;
- f) income and expenses relating to the segregated accounts in the sector of social security, assistance and other mandatory forms of public social security;
- g) state property and state assets, including corporate value net of productive units in the process of privatization or of disposal;
- h) national, European and foreign currencies, securities, values and means of payment foreign, as well as financial and capital movements;
- i) financial and securities markets, including the exercise of credit and the solicitation of public savings;
- [j-k]
- l) copyrights, know-how, patents, trademarks and other rights of industrial property rights, relating to their exercise and economic exploitation;
- m) any other national or Union economic and financial interest

3. The Corps of the Guardia di Finanza, also making use of the own air-naval device, operates at sea, except for what provided for by article 2, first paragraph, letter c), of law 31 December 1982, n. 979 by articles 200, 201 and 202 of the code of the navigation and international agreements, and institutional tasks conferred by the laws in force to the Port Authority Corps, economic and financial police functions exclusively requesting the collaboration of other bodies for the exercise of own duties, as well as, without prejudice to the provisions of the law 1 April 1981, n. 121, as regards the coordination of police forces in matters of public order and safety, activities of contrasting illicit trafficking.

4. Without prejudice to the provisions of the criminal procedure code and the other laws in force, the military of the Corps, in carrying out the tasks referred to in paragraph 2, make use of the faculties and powers provided for in articles 32 and 33 of the decree of the President of the Repubblica 29 September 1973, n. 600, and subsequent amendments, 51 and 52 of the decree of the President of the Republic October 26, 1972, n. 633, and subsequent amendments.

5. For the purposes of carrying out the tasks referred to in this article provisions continue to apply, for as many facts as they may be configured as tax violations, referred to in articles 36, last paragraph, of the decree of the President of the Repubblica 29 September

1973, n. 600, added by article 19, paragraph 1, letter d) of law no. 413, and 32 of the law 7 January 1929, n. 4.

Ministry of Justice Circular No 34/638 of 18 October 1989, which reiterates that officials other than those belonging to the *Polizia Giudiziaria* cannot continue inspection activities applying the rules of criminal procedure.¹⁸⁶ **28**

(b) Specific Decrees, non-formal laws, execution of the CPC, Tax Acts

Legislative Decree February 2, 2021, n. 9: For example the Ministry of Finance issues special circulars, which indicate further rules, which shall be cited here e.g.: **29**

Circular of 12/29/2021 n. 20 – Revenue Agency – Central Directorate for Regulatory Coordination

Legislative Decree 28 July 1989, n. 271 – Implementation provisions of the criminal procedure code/ D. lgs. 28 luglio 1989, n. 271 – *Disposizioni di attuazione del codice di procedura penale.* **30**

Title I – Implementation rules (articles 1–206)

Chapter I – Provisions relating to the judge

Chapter II – Provisions relating to the public prosecutor

Chapter III – Provisions relating to the judicial police

Chapter VIII – Provisions relating to preliminary investigations

¹⁸⁶ Nicolicchia 2017, p. 16.

Legislative Decree February 2, 2021, n. 9

Provisions for the adaptation of national legislation to the provisions of Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of enhanced cooperation on the establishment of the European Public Prosecutor's Office "EPPO".

(21G00012)¹⁸⁷

Article 6¹⁸⁸ Provisions resulting from the appointment of the European delegated prosecutors

1. The High Council of the Judiciary appoints the judges appointed as European delegated prosecutors to the offices indicated in article 10, arranging for their transfer and, if necessary, the change of their functions in compliance with the availability expressed in relation to the transformation offices and provisions referred to in article 13, paragraphs 3, 4 and 5 of the Legislative Decree 5 April 2006, n. 160.

2. With the transfer resolution, if the agreement referred to in Article 4, paragraph 1, provides that the magistrate appointed as European Delegated Prosecutor also exercises the functions of national public prosecutor, the High Council of the Judiciary orders partial exemption from ordinary judicial activity to an extent corresponding to that

¹⁸⁷ **DECRETO LEGISLATIVO 2 febbraio 2021, n. 9**

Disposizioni per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1939 del Consiglio, del 12 ottobre 2017, relativo all'attuazione di una cooperazione rafforzata sull'istituzione della Procura europea «EPPO». (21G00012)

¹⁸⁸ **Art. 6. Provvedimenti conseguenti alla nomina dei procuratori europei delegati**

1. Il Consiglio superiore della magistratura destina i magistrati nominati procuratori europei delegati alle sedi indicate nell'articolo 10, disponendo il trasferimento e, se necessario, il mutamento di funzioni degli stessi nel rispetto delle disponibilità manifestate in relazione alle sedi di trasferimento e delle disposizioni cui all'articolo 13, commi 3, 4 e 5 del decreto legislativo 5 aprile 2006, n. 160.

2. Con la delibera di trasferimento, qualora l'accordo di cui all'articolo 4, comma 1, preveda che il magistrato nominato procuratore europeo delegato eserciti anche le funzioni di pubblico ministero nazionale, il Consiglio superiore della magistratura dispone l'esonero parziale dall'attività giudiziaria ordinaria in misura corrispondente a quella convenuta nell'accordo. Le funzioni di pubblico ministero nazionale sono esercitate presso la procura della Repubblica di assegnazione di cui al comma 1.

3. Alla cessazione dell'incarico di procuratore europeo delegato, il magistrato ha diritto ad essere riassegnato, a domanda, alla sede di provenienza, con le precedenti funzioni, anche in soprannumero da riassorbire con le successive vacanze. In mancanza di una domanda di riassegnazione alla sede di provenienza o di trasferimento ad altra sede, il magistrato cessato dall'incarico di procuratore europeo delegato resta assegnato alla procura della Repubblica cui è stato trasferito ai sensi del comma 1, anche in soprannumero da riassorbire con le successive vacanze.

4. Il Consiglio superiore della magistratura richiede, con cadenza annuale, alla Procura europea di comunicare se nei confronti dei magistrati nominati procuratori europei delegati siano stati avviati o definiti procedimenti disciplinari, ovvero se, nei casi agli stessi assegnati, il procuratore europeo incaricato della supervisione abbia adottato la decisione di svolgere l'indagine di persona ai sensi dell'articolo 28, paragrafo 4, lettera c), del regolamento.

5. Fermo quanto previsto dal comma 3 e dall'articolo 11, comma 1, il procuratore europeo delegato informa senza ritardo il procuratore generale presso la Corte di cassazione e il Ministro della giustizia: a) quando riceve formale notizia dell'avvio di un procedimento disciplinare nei suoi confronti per motivi connessi alle responsabilità che gli derivano dal regolamento; b) quando, in un caso assegnatogli, la camera permanente assume una decisione di riassegnazione per i motivi di cui all'articolo 28, paragrafo 3, lettera b), del regolamento o il procuratore europeo adotta la decisione di svolgere l'indagine di persona ai sensi dell'articolo 28, paragrafo 4, lettera c), del regolamento.

agreed in the agreement. The functions of national public prosecutor are exercised at the public prosecutor's office of assignment referred to in paragraph 1

3. Upon termination of the mandate of European Delegated Prosecutor, the magistrate has the right to be reassigned, upon request, to the place of origin, with the previous functions, even in excess to be reabsorbed with subsequent vacancies. In the absence of a request for reassignment to the place of origin or for transfer to another location, the magistrate who has ceased from the office of delegated European prosecutor remains assigned to the public prosecutor's office to which he was transferred pursuant to paragraph 1, even in excess to be reabsorbed. with subsequent vacancies.

4. The High Council of the Judiciary requests, on an annual basis, the European Public Prosecutor's Office to communicate whether disciplinary proceedings have been initiated or defined against the judges appointed as European Delegated Prosecutors, or if, in the cases assigned to them, the European Prosecutor in charge of supervision has taken the decision to conduct the investigation in person pursuant to Article 28 (4) (c) of the Regulation.

5. Without prejudice to the provisions of paragraph 3 and article 11, paragraph 1, the European delegated prosecutor shall inform the Attorney General at the Court of Cassation and the Minister of Justice without delay: a) when he receives formal notice of the initiation of proceedings disciplining him for reasons connected with the responsibilities deriving from the regulation; b) when, in a case assigned to him, the permanent chamber takes a reassignment decision for the reasons referred to in Article 28 (3) (b) of the Regulation or the European Public Prosecutor takes the decision to conduct the investigation in person pursuant to Article 28 (4) (c) of the Regulation.

Article 9¹⁸⁹ Powers of the European Delegated Prosecutors and the European Prosecutor

1. In relation to the proceedings for which the European Public Prosecutor has taken the decision to initiate or evocate an investigation, the European Delegated Prosecutors shall exercise, exclusively and up to the definition of the proceedings, in the interest of the

¹⁸⁹ Art. 9. Poteri dei procuratori europei delegati e del procuratore europeo

1. In relazione ai procedimenti per i quali la Procura europea ha assunto la decisione di avviare o avocare un'indagine, i procuratori europei delegati esercitano, in via esclusiva e fino alla definizione del procedimento, nell'interesse della Procura europea e conformemente alle disposizioni del regolamento e del presente decreto, le funzioni e i poteri spettanti ai pubblici ministeri nazionali.

2. Ferme in ogni caso le regole ordinarie sulla competenza del giudice, i procuratori europei delegati esercitano le funzioni requirenti sull'intero territorio nazionale, indipendentemente dalla sede di assegnazione.

3. I procuratori europei delegati, nell'esercizio delle funzioni di cui al comma 1, non sono soggetti ai poteri di direzione attribuiti ai procuratori della Repubblica dall'articolo 70 del regio decreto 30 gennaio 1941, n. 12, e dagli articoli 1, 2, 3 e 4, comma 1, del decreto legislativo 20 febbraio 2006, n. 106, ne' all'attivita' di vigilanza del procuratore generale presso la corte di appello prevista dall'articolo 6 del decreto legislativo 20 febbraio 2006, n. 106. Non si applicano gli articoli 53, 371-bis, 372, 412, 413 e 421-bis, commi 1, secondo periodo, e 2, del codice di procedura penale.

4. Nel caso previsto dall'articolo 28, paragrafo 4, del regolamento, il procuratore europeo esercita le funzioni requirenti secondo quanto previsto dai commi 1 e 2.

European Public Prosecutor's office and in accordance with the provisions of the regulation and of this decree, the functions and powers of national prosecutors.

2. Without prejudice to the ordinary rules on the competence of the judge, the European delegated prosecutors exercise the prosecuting functions throughout the national territory, regardless of the place of assignment.

3. The European delegated prosecutors, in the exercise of the functions referred to in paragraph 1, are not subject to the direction powers attributed to the public prosecutors of the Republic by article 70 of the royal decree no. 12, and by articles 1, 2, 3 and 4, paragraph 1, of the Legislative Decree 20 February 2006, n. 106, nor to the supervisory activity of the Attorney General at the Court of appeal provided for by article 6 of the Legislative Decree 20 February 2006, n. 106. Articles 53, 371-bis, 372, 412, 413 and 421-bis, paragraphs 1, second sentence, and 2, of the Code of Criminal Procedure do not apply.

4. In the case envisaged by article 28, paragraph 4, of the regulation, the European prosecutor shall exercise the requisitioning functions in accordance with the provisions of paragraphs 1 and 2.

Article 11¹⁹⁰ Evaluations of professionalism of European delegated prosecutors

1. For the purposes of the professionalism assessment procedure referred to in Article 11 of Legislative Decree no. 160, as amended by article 2, paragraph 2, of law no. 111, the High Council of the Judiciary requests the European Public Prosecutor's Office to transmit:

- a) an information report on the activity carried out by the magistrate appointed as European delegated prosecutor and the related statistical data;
- b) copy of previous performance evaluation reports;
- c) information relating to any decisions to reassign cases taken by the permanent chamber for the reasons referred to in Article 28 (3) of the Regulation;
- d) an update of the information referred to in article 6, paragraph 4.

¹⁹⁰ Art. 11. Valutazioni di professionalita' dei procuratori europei delegati

1. Ai fini della procedura di valutazione della professionalita' di cui all'articolo 11 del decreto legislativo 5 aprile 2006, n. 160, come modificato dall'articolo 2, comma 2, della legge 30 luglio 2007, n. 111, il Consiglio superiore della magistratura richiede alla Procura europea di trasmettere:

- a) un rapporto informativo sull'attivita' svolta dal magistrato nominato procuratore europeo delegato e i relativi dati statistici;
- b) copia dei precedenti rapporti di valutazione del rendimento;
- c) notizie relative alle eventuali decisioni di riassegnazione dei casi assunte dalla camera permanente per i motivi di cui all'articolo 28, paragrafo 3, del regolamento; d) un aggiornamento delle informazioni di cui all'articolo 6, comma 4.

2. La documentazione di cui al comma 1, unitamente a quella in precedenza acquisita sull'attivita' del procuratore europeo delegato ai sensi dell'articolo 6, comma 4, e' trasmessa dal Consiglio superiore della magistratura al Consiglio giudiziario della Corte di appello di Roma ed e' utilizzata ai fini delle valutazioni di professionalita', ai sensi dell'articolo 11 del decreto legislativo 5 aprile 2006, n. 160.

2. The documentation referred to in paragraph 1, together with that previously acquired on the activity of the European delegated prosecutor pursuant to Article 6, paragraph 4, is transmitted by the High Council of the Judiciary to the Judicial Council of the Court of Appeal of Rome and is used for the purposes of professionalism assessments, pursuant to article 11 of the Legislative Decree 5 April 2006, n. 160.

ff. Urgent measures in accordance with national law necessary to ensure effective investigations

Article 327 CPC¹⁹¹ Direction of preliminary investigations Criminal Procedure Code

32

1. The public prosecutor directs the investigation and disposes directly of the judicial police who, even after the communication of the crime, continues to carry out activities on its own initiative according to the modalities indicated in the following articles.

Article 352 CPC¹⁹² Searches

1. In flagrante delicto or in the case of evasion, the judicial police officers carry out a personal or local search when they have well-founded reason to believe that the person has hidden things or traces pertaining to the crime that can be deleted or dispersed or

¹⁹¹ **Art. 327. Codice di Procedura Penale** Direzione delle indagini preliminari

1. Il pubblico ministero dirige le indagini e dispone direttamente della polizia giudiziaria (che, anche dopo la comunicazione della notizia di reato, continua a svolgere attività di propria iniziativa secondo le modalità indicate nei successivi articoli.)

¹⁹² **Art. 352. Codice di Procedura Penale** Perquisizioni.

1. Nella flagranza del reato o nel caso di evasione, gli ufficiali di polizia giudiziaria procedono a perquisizione personale o locale quando hanno fondato motivo di ritenere che sulla persona si trovino occultate cose o tracce pertinenti al reato che possono essere cancellate o disperse ovvero che tali cose o tracce si trovino in un determinato luogo o che ivi si trovi la persona sottoposta alle indagini o l'evaso.

1-bis. Nella flagranza del reato, ovvero nei casi di cui al comma 2 quando sussistono i presupposti e le altre condizioni ivi previsti, gli ufficiali di polizia giudiziaria, adottando misure tecniche dirette ad assicurare la conservazione dei dati originali e ad impedirne l'alterazione, procedono altresì alla perquisizione di sistemi informatici o telematici, ancorché protetti da misure di sicurezza, quando hanno fondato motivo di ritenere che in questi si trovino occultati dati, informazioni, programmi informatici o tracce comunque pertinenti al reato che possono essere cancellati o dispersi. (1)

2. Quando si deve procedere alla esecuzione di un'ordinanza che dispone la custodia cautelare o di un ordine che dispone la carcerazione nei confronti di persona imputata o condannata per uno dei delitti previsti dall'articolo 380 ovvero al fermo di una persona indiziata di delitto, gli ufficiali di polizia giudiziaria possono altresì procedere a perquisizione personale o locale se ricorrono i presupposti indicati nel comma 1 e sussistono particolari motivi di urgenza che non consentono la emissione di un tempestivo decreto di perquisizione.

3. La perquisizione domiciliare può essere eseguita anche fuori dei limiti temporali dell'articolo 251 quando il ritardo potrebbe pregiudicare l'esito.

4. La polizia giudiziaria trasmette senza ritardo, e comunque non oltre le quarantotto ore, al pubblico ministero del luogo dove la perquisizione è stata eseguita il verbale delle operazioni compiute. Il pubblico ministero, se ne ricorrono i presupposti, nelle quarantotto ore successive, convalida la perquisizione.

4-bis. Salvo che alla perquisizione sia seguito il sequestro, entro dieci giorni dalla data in cui hanno avuto conoscenza del decreto di convalida, la persona nei cui confronti vengono svolte le indagini e la persona nei cui confronti la perquisizione è stata disposta o eseguita possono proporre opposizione, sulla quale il giudice provvede a norma dell'articolo 127. Si applica la disposizione di cui all'articolo 252-bis, comma 3.

that such things or traces are in a specific place or that the person under investigation or the escaped person is there.

1-bis. In flagrante delicto, or in the cases referred to in paragraph 2 when the conditions and other conditions provided for therein exist, the judicial police officers, adopting technical measures aimed at ensuring the conservation of the original data and preventing its alteration, also proceed to the search of computer or telematic systems, even if protected by security measures, when they have well-founded reason to believe that in these there are hidden data, information, computer programs or traces in any case pertinent to the crime that can be deleted or dispersed.

2. When it is necessary to proceed with the execution of an order that provides for precautionary custody or an order that orders the imprisonment of a person accused or sentenced for one of the crimes provided for in Article 380 or the detention of a person suspected of crime, the judicial police officers may also carry out a personal or local search if the conditions indicated in paragraph 1 are met and there are particular reasons of urgency that do not allow the issuance of a timely search decree.

3. The house search can also be carried out outside the time limits of article 251 when the delay could jeopardize the outcome.

4. The judicial police shall send without delay, and in any case no later than forty-eight hours, to the public prosecutor of the place where the search was carried out the report of the operations carried out. The prosecutor, if the conditions are met, in the following forty-eight hours, validates the search.

4-bis. Except where the search is followed by seizure, within ten days from the date on which they became aware of the validation decree, the person under investigation and the person in respect of whom the search was ordered or carried out may file an opposition, on which the judge shall rule in accordance with Article 127. The provision of Article 252-bis, paragraph 3, shall apply.

Article 354 CPC Urgent investigations on places, things and people. Seizure

1.¹⁹³ The officers and judicial police officers ensure that the traces and things pertaining to the crime are preserved and that the state of places and things is not changed before the intervention of Public minister.

¹⁹³ **Art. 354. Codice di Procedura Penale** Accertamenti urgenti sui luoghi, sulle cose e sulle persone.

Sequestro

1. Gli ufficiali e gli agenti di polizia giudiziaria curano che le tracce e le cose pertinenti al reato siano conservate e che lo stato dei luoghi e delle cose non venga mutato prima dell'intervento del pubblico ministero.

2. Se vi è pericolo che le cose, le tracce e i luoghi indicati nel comma 1 si alterino o si disperdano o comunque si modificano e il pubblico ministero non può intervenire tempestivamente, ovvero non ha ancora assunto la direzione delle indagini, gli ufficiali di polizia giudiziaria compiono i necessari accertamenti e rilievi sullo stato dei luoghi e delle cose. In relazione ai dati, alle informazioni e ai programmi informatici o ai sistemi informatici o

2. If there is danger that the things, traces and places indicated in the paragraph 1 are altered or dispersed or in any case modified and the prosecutor cannot intervene promptly, or not has still taken over the investigation, the officers of judicial police carry out the necessary investigations and surveys on the state of places and things. In relation to the data, at information and computer programs or computer systems or telematics, the judicial police officers adopt, likewise, the technical measures or impart prescriptions necessary to ensure their conservation and to prevent them alteration and access and provide, where possible, to them immediate duplication on suitable supports, by means of a procedure which ensures the conformity of the copy to the original and its own immutability. If necessary, they seize the body of the offense and the things pertinent to this.
3. If the conditions provided for in paragraph 2 are met, the officers judicial police carry out the necessary investigations and findings on persons other than personal inspection.

c) Provisions in relation to the Gathering Evidence

Criminal Procedure Code¹⁹⁴

33

Part One

Third Book Evidence

Title I. General provisions

Article 187 CPC¹⁹⁵ Object of evidence

1. The facts relating to the imputation, the punishment and the determination of the penalty or security measure are the subject of evidence.
2. The facts on which the application of procedural rules depends are also subject to evidence.
3. If there is a civil action, the facts relating to the civil liability deriving from the crime are also subject to evidence.

telematici, gli ufficiali della polizia giudiziaria adottano, altresì, le misure tecniche o impartiscono le prescrizioni necessarie ad assicurarne la conservazione e ad impedirne l'alterazione e l'accesso e provvedono, ove possibile, alla loro immediata duplicazione su adeguati supporti, mediante una procedura che assicuri la conformità della copia all'originale e la sua immodificabilità'. Se del caso, sequestrano il corpo del reato e le cose a questo pertinenti.

3. Se ricorrono i presupposti previsti dal comma 2, gli ufficiali di polizia giudiziaria compiono i necessari accertamenti e rilievi sulle persone diversi dalla ispezione personale. (PERIODO SOPPRESSO DALLA L. 30 GIUGNO 2009, N. 85).

¹⁹⁴ Codice di Procedura Penale.

¹⁹⁵ PARTE PRIMA

LIBRO TERZO

PROVE

TITOLO I

Disposizioni generali

Art. 187. Codice di Procedura Penale Oggetto della prova.

1. Sono oggetto di prova i fatti che si riferiscono all'imputazione, alla punibilità e alla determinazione della pena o della misura di sicurezza.
2. Sono altresì oggetto di prova i fatti dai quali dipende l'applicazione di norme processuali.
3. Se vi è costituzione di parte civile, sono inoltre oggetto di prova i fatti inerenti alla responsabilità civile derivante dal reato.

Article 188¹⁹⁶ Moral freedom of the person in taking proof

1. Methods or techniques capable of affecting the freedom of self-determination or of altering the ability to remember and evaluate facts may not be used, even with the consent of the person concerned.

Article 189¹⁹⁷ Evidence not regulated by law

1. When evidence that is not regulated by the law is required, the judge can take it if it is suitable for ascertaining the facts and does not affect the moral freedom of the person. The judge provides for admission, after hearing the parties on the methods of taking the evidence.

Chapter VI Expert evidence

Article 220 CPC¹⁹⁸ Object of the expert evidence

1. The expert evidence is allowed when it is necessary to carry out investigations or acquire data or evaluations that require specific technical, scientific or artistic skills.
2. Except as provided for the purposes of the execution of the sentence or security measure, no expert reports are allowed to establish the habituality or professionalism of the crime, the tendency to commit a crime, the character and personality of the accused and in general the psychic qualities independent of pathological causes.

Article 244 CPC¹⁹⁹ Cases and forms of inspections

1. The inspection of people, places and things is ordered by a reasoned decree when it is necessary to ascertain the traces and other material effects of the crime.

¹⁹⁶ **Art. 188. Codice di Procedura Penale** Libertà morale della persona nell'assunzione della prova.

1. Non possono essere utilizzati, neppure con il consenso della persona interessata, metodi o tecniche idonei a influire sulla libertà di autodeterminazione o ad alterare la capacità di ricordare e di valutare i fatti.

¹⁹⁷ **Art. 189. Codice di Procedura Penale** Prove non disciplinate dalla legge.

1. Quando è richiesta una prova non disciplinata dalla legge, il giudice può assumerla se essa risulta idonea ad assicurare l'accertamento dei fatti e non pregiudica la libertà morale della persona. Il giudice provvede all'ammissione, sentite le parti sulle modalità di assunzione della prova.

¹⁹⁸ **Capo VI**

Perizia

Art. 220. Codice di Procedura Penale Oggetto della perizia.

1. La perizia è ammessa quando occorre svolgere indagini o acquisire dati o valutazioni che richiedono specifiche competenze tecniche, scientifiche o artistiche.

2. Salvo quanto previsto ai fini dell'esecuzione della pena o della misura di sicurezza, non sono ammesse perizie per stabilire l'abitudine o la professionalità nel reato, la tendenza a delinquere, il carattere e la personalità dell'imputato e in genere le qualità psichiche indipendenti da cause patologiche.

¹⁹⁹ **Art. 244. Codice di Procedura Penale** Casi e forme delle ispezioni.

1. L'ispezione delle persone, dei luoghi e delle cose è disposta con decreto motivato quando occorre accertare le tracce e gli altri effetti materiali del reato.

2. Se il reato non ha lasciato tracce o effetti materiali, o se questi sono scomparsi o sono stati cancellati o dispersi, alterati o rimossi, l'autorità giudiziaria descrive lo stato attuale e, in quanto possibile, verifica quello preesistente, curando anche di individuare modo, tempo e cause delle eventuali modificazioni. L'autorità giudiziaria può disporre rilievi segnaletici, descrittivi e fotografici e ogni altra operazione tecnica, anche in relazione a sistemi informatici o telematici, adottando misure tecniche dirette ad assicurare la conservazione dei dati originali e ad impedirne l'alterazione.

2. If the offense has not left traces or material effects, or if these have disappeared or have been cancelled or dispersed, altered or removed, the judicial authority describes the current state and, as far as possible, verifies the pre-existing one, also taking care of identify the manner, time and causes of any changes. The judicial authority may order reporting, descriptive and photographic surveys and any other technical operation, also in relation to IT or telematic systems, adopting technical measures aimed at ensuring the conservation of the original data and preventing its alteration.

Italian criminal procedure defines the scope and **admissibility of evidence** (Art. 187 CPC), requiring proof to cover facts relevant to the charge, sentencing, procedural rules, and civil liability arising from the offence. Evidence must respect the moral freedom of individuals (Art. 188 CPC), and unregulated forms of evidence may be admitted if suitable and non-coercive, with the judge hearing the parties first (Art. 189 CPC). Expert appraisals (Art. 220 CPC) are permitted where specialised skills are needed, but not for assessing an accused's criminal tendencies or personality unrelated to pathology. Inspections (Art. 244 CPC) allow the judicial authority to examine persons, places, and things to record traces of the offence. **34**

Article 327-bis. CPC²⁰⁰ Investigative activity of the defender

35

1. From the moment of the professional assignment, resulting from a written deed, the defender has the right to carry out investigations to search and identify evidence in favour of his client, in the forms and for the purposes established in title VI-bis of this book.

2. The faculty indicated in paragraph 1 can be attributed for the exercise of the right of defence, in every state and grade of the proceeding, in the criminal execution and to promote the re-opening of the trial.

3. The activities envisaged in paragraph 1 may be carried out, on behalf of the defender, by the substitute, by authorised private investigators and, when specific skills are required, by technical consultants.

Article 347 CPC Obligation to report the crime

See above → Article 27 Right of evocation, Criminal complaint.

²⁰⁰ **Art. 327-bis. Codice di Procedura Penale** Attività investigativa del difensore.

1. Fin dal momento dell'incarico professionale, risultante da atto scritto, il difensore ha facoltà di svolgere investigazioni per ricercare ed individuare elementi di prova a favore del proprio assistito, nelle forme e per le finalità stabilite nel titolo VI-bis del presente libro.

2. La facoltà indicata al comma 1 può essere attribuita per l'esercizio del diritto di difesa, in ogni stato e grado del procedimento, nell'esecuzione penale e per promuovere il giudizio di revisione.

3. Le attività previste dal comma 1 possono essere svolte, su incarico del difensore, dal sostituto, da investigatori privati autorizzati e, quando sono necessarie specifiche competenze, da consulenti tecnici.

Article 348 CPC²⁰¹ Assurance of sources of evidence.

1. Even after the report of the crime has been communicated, the judicial police continue to carry out the functions indicated in article 55, collecting in particular all elements useful for reconstructing the fact and identifying the guilty party.
2. For the purpose indicated in paragraph 1, it proceeds, among other things:
 - a) in search of things and traces pertaining to the crime as well as to the conservation of them and the state of the places;
 - b) looking for people able to report on circumstances relevant to the reconstruction of the facts;
 - c) to carry out the acts indicated in the following articles.
3. After the intervention of the public prosecutor, the judicial police carry out the acts specifically delegated to it in accordance with Article 370, carry out the directives of the public prosecutor and also carry out on its own initiative, promptly informing the public prosecutor, all other activities of investigation to ascertain the crimes or requested by virtue of elements subsequently emerged and ensures the new sources of evidence.
4. The judicial police, when, on its own initiative or following a delegation from the public prosecutor, carries out acts or operations that require specific technical skills, can make use of suitable persons who cannot refuse their work.

Second Part

Book Five: Preliminary Investigations And Preliminary Hearing

Title VII Evidence pre-trial hearing

Article 392 CPC Cases

- 1.²⁰² During the preliminary investigations, the public prosecutor and the person under investigation may ask the judge to proceed with an evidence pre-trial hearing for:

²⁰¹ **Art. 348. Codice di Procedura Penale** Assicurazione delle fonti di prova.

1. Anche successivamente alla comunicazione della notizia di reato, la polizia giudiziaria continua a svolgere le funzioni indicate nell'articolo 55 raccogliendo in specie ogni elemento utile alla ricostruzione del fatto e alla individuazione del colpevole.

2. Al fine indicato nel comma 1, procede, fra l'altro:

- a) alla ricerca delle cose e delle tracce pertinenti al reato nonché alla conservazione di esse e dello stato dei luoghi;
- b) alla ricerca delle persone in grado di riferire su circostanze rilevanti per la ricostruzione dei fatti;
- c) al compimento degli atti indicati negli articoli seguenti.

3. Dopo l'intervento del pubblico ministero, la polizia giudiziaria compie gli atti ad essa specificamente delegati a norma dell'articolo 370, esegue le direttive del pubblico ministero ed inoltre svolge di propria iniziativa, informandone prontamente il pubblico ministero, tutte le altre attività di indagine per accertare i reati ovvero richieste da elementi successivamente emersi e assicura le nuove fonti di prova. (1)

4. La polizia giudiziaria, quando, di propria iniziativa o a seguito di delega del pubblico ministero, compie atti od operazioni che richiedono specifiche competenze tecniche, può avvalersi di persone idonee le quali non possono rifiutare la propria opera.

²⁰² **PARTE SECONDA**

LIBRO QUINTO

INDAGINI PRELIMINARI E UDIENZA PRELIMINARE

- a) the taking of the testimony of a person, when there is well-founded reason to believe that the same cannot be examined in the trial due to illness or other serious impediment;
- b) the taking of a testimony when, for concrete and specific elements, there is well-founded reason to believe that the person is exposed to violence, threats, offers or promises of money or other benefits so that he does not testify or falsely testify;
- c) the examination of the person under investigation into facts concerning the responsibility of others;
- d) the examination of the persons indicated in article 210 and examination of witnesses of justice;

TITOLO VII

Incidente probatorio

Art. 392. Codice di Procedura Penale Casi. (1)

1. Nel corso delle indagini preliminari il pubblico ministero e la persona sottoposta alle indagini possono chiedere al giudice che si proceda con incidente probatorio:

- a) all'assunzione della testimonianza di una persona, quando vi è fondato motivo di ritenere che la stessa non potrà essere esaminata nel dibattimento per infermità o altro grave impedimento;
- b) all'assunzione di una testimonianza quando, per elementi concreti e specifici, vi è fondato motivo di ritenere che la persona sia esposta a violenza, minaccia, offerta o promessa di denaro o di altra utilità affinché non deponga o deponga il falso;
- c) all'esame della persona sottoposta alle indagini su fatti concernenti la responsabilità di altri;
- d) all'esame delle persone indicate nell'articolo 210 e all'esame dei testimoni di giustizia (4);
- e) al confronto tra persone che in altro incidente probatorio o al pubblico ministero hanno reso dichiarazioni discordanti, quando ricorre una delle circostanze previste dalle lettere a) e b);
- f) a una perizia o a un esperimento giudiziale, se la prova riguarda una persona, una cosa o un luogo il cui stato è soggetto a modificazione non evitabile;
- g) a una ricognizione, quando particolari ragioni di urgenza non consentono di rinviare l'atto al dibattimento.

1-bis. Nei procedimenti per i delitti di cui agli articoli 572, 600, 600-bis, 600-ter e 600-quater, anche se relativi al materiale pornografico di cui all'articolo 600-quater.1, 600-quinquies, 601, 602, 609-bis, 609-quater, 609-quinquies, 609-oties, 609-undecies e 612-bis del codice penale il pubblico ministero, anche su richiesta della persona offesa, o la persona sottoposta alle indagini possono chiedere che si proceda con incidente probatorio all'assunzione della testimonianza di persona minorenni ovvero della persona offesa maggiorenne, anche al di fuori delle ipotesi previste dal comma 1. In ogni caso, quando la persona offesa versa in condizione di particolare vulnerabilità, il pubblico ministero, anche su richiesta della stessa, o la persona sottoposta alle indagini possono chiedere che si proceda con incidente probatorio all'assunzione della sua testimonianza. (2)

2. Il pubblico ministero e la persona sottoposta alle indagini possono altresì chiedere una perizia che, se fosse disposta nel dibattimento, ne potrebbe determinare una sospensione superiore a sessanta giorni ovvero che comporti l'esecuzione di accertamenti o prelievi su persona vivente previsti dall'Art. 224-bis. (3)

1) La Corte Costituzionale con sentenza 10 marzo 1994, n. 77 ha dichiarato l'illegittimità costituzionale del presente articolo nella parte in cui non consente che, nei casi previsti dalla prima di tali disposizioni, l'incidente probatorio possa essere richiesto ed eseguito anche nella fase dell'udienza preliminare.

(2) Comma così modificato dall'Art. 9, comma 1, lett. b) del D. L. 23 febbraio 2009, n. 11 e sostituito dall'Art. 5, comma 1, lett. g), L. 1 ottobre 2012, n. 172. Successivamente, il presente comma è stato così modificato dall'Art. 1, comma 1, lett. h), D.Lgs. 15 dicembre 2015, n. 212.

(3) Le parole: "ovvero che comporti l'esecuzione di accertamenti o prelievi su persona vivente previsti dall'Art. 224-bis." è stato aggiunto dall'Art. 28 della L. 30 giugno 2009, n. 85.

(4) La presente lettera è stata così modificata dall'Art. 21, comma 1, L. 11 gennaio 2018, n. 6, a decorrere dal 21 febbraio 2018.

Reati sessuali: legittimo sentire il minore con incidente probatorio anche se non è vittima, Corte costituzionale, sentenza 5 febbraio 2021, n. 14

e) the confrontation between persons who in another evidence pre-trial hearing or to the public prosecutor have made conflicting statements, when one of the circumstances provided for in letters a) and b) occurs;

f) an expert evidence or a judicial experiment, if the evidence concerns a person, thing or place whose condition is subject to unavoidable change;

g) an identity parade, when particular reasons of urgency do not allow the deed to be postponed to the hearing.

1-bis. In proceedings for the crimes referred to in articles 572, 600, 600-bis, 600-ter and 600-quater, even if relating to pornographic material referred to in article 600-quater.1, 600-quinquies, 601, 602, 609-bis, 609-quater, 609-quinquies, 609-octies, 609-undecies and 612-bis of the criminal code, the public prosecutor, even at the request of the person offended by the crime, or the person under investigation may request an evidence pre-trial hearing for the taking of the testimony of a minor or of the person offended by the crime, even outside the hypotheses provided for in paragraph 1. In any case, when the person offended by the crime is in a particularly vulnerable condition, the public prosecutor, even at the request of the same offended person, or the person under investigation may request an evidence pre-trial hearing for the assumption of his testimony.

2. The public prosecutor and the person being investigated may also request an expert evidence which, if ordered in the trial, could result in a suspension of more than sixty days or which would involve the execution of investigations or sampling on a living person provided for by Art. 224-bis.

(1) The Constitutional Court with sentence 10 March 1994, n. 77 declared the constitutional illegitimacy of this article in the part in which it does not allow that, in the cases provided for by the first of these provisions, the evidence pre-trial hearing can be requested and carried out even in the preliminary hearing phase.

d) Summary

- 36 EDPs are *de facto* like “managers”. They have to cope with various persons for a case and cooperate intensively with external or close partners to conduct an investigation. The old image of a prosecutor in his office, surrounded by mile-high case files, is gone with the **EPPO Case Management System**. Art. 28 EPPO Regulation enables the EDPs to allocate the workload for a dozen of VAT cases, fraud cases, etc. The Italian CPP enables the EDPs to investigate according to the EPPO Regulation.

4. Article 29 Lifting privileges or immunities

4. Article 29 Lifting privileges or immunities	193	(3) National legislation	199
a) National privilege and immunity provisions, para 1	193	cc. Privilege against self-incrimination	199
aa. Legal (professional) privilege	194	(1) Enshrinement in Italian law	199
(1) Provisions in Italian Criminal law	194	(2) National legislation	202
(2) Provisions on Lifting a legal (professional) privilege	197	b) Immunity provisions	202
bb. Spousal privilege....	198	c) Immunities and Privileges under union law, para 2	204
(1) Provisions in Italian law	198		
(2) Provisions on lifting a spousal privilege	199		

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

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

The Italian system of privileges and immunities is complex and even if some of the following articles and provisions may only be applicable in fully national cases privileges and immunities they shall be presented in full depth as they can be of relevance in cases below the threshold of 10.000 € (*Piccoli risarcimenti*) i.e. frauds, which might be prosecuted by national authorities in cases of referral (Art. 25/27: cases of non-evocation/34 EPPO Regulation). In **corruption cases** parliamentary privileges and immunities are of special interest: 1

a) National privilege and immunity provisions, para 1

2

One of the most important principles in every EPPO investigation will be the *nemo tenetur se ipsum accusare* principle requiring the EDPs and the investigative staff in Italy to respect the rights of the individual to not contest against oneself.²⁰³

aa. Legal (professional) privilege

(1) Provisions in Italian Criminal law

3

Criminal procedure code²⁰⁴

Article 200²⁰⁵ Professional secrecy Codice di Procedura Penale

1. They **cannot be obliged to testify** on what they have known by reason of their ministry, office or profession, except in cases where they are obliged to report it to the judicial authority:

- a) ministers of religious confessions, whose statutes do not conflict with the Italian legal system;
- b) lawyers, authorised private investigators, technical consultants and notaries;
- c) doctors and surgeons, pharmacists, midwives and any other health professional;
- d) those exercising other offices or professions to whom the law recognizes the right to refrain from testifying determined by professional secrecy.

2. If the judge has reason to doubt that the declaration made by such persons to refrain from testifying is unfounded, he shall make the necessary investigations. If it turns out to be unfounded, order the witness to testify.

3. The provisions set forth in paragraphs 1 and 2 apply to professional journalists registered in the professional register, in relation to the names of the persons from whom they have received news of a fiduciary nature in the exercise of their profession. However, if the information is essential for the purpose of proving the crime for which one proceeds and its truthfulness can only be ascertained by identifying the source of the news, the judge orders the journalist to indicate the source of his information.

²⁰³ See Marchesi and Panzavolta 2021, pp. 365–388 focusing on the aspects and the overarching rules.

²⁰⁴ Codice di procedura penale.

²⁰⁵ **Art. 200. Segreto professionale.**

1. Non possono essere obbligati a deporre su quanto hanno conosciuto per ragione del proprio ministero, ufficio o professione, salvi i casi in cui hanno l'obbligo di riferirne all'autorità giudiziaria:

- a) i ministri di confessioni religiose, i cui statuti non contrastino con l'ordinamento giuridico italiano;
- b) gli avvocati, gli investigatori privati autorizzati, i consulenti tecnici e i notai;
- c) i medici e i chirurghi, i farmacisti, le ostetriche e ogni altro esercente una professione sanitaria;
- d) gli esercenti altri uffici o professioni ai quali la legge riconosce la facoltà di astenersi dal deporre determinata dal segreto professionale.

2. Il giudice, se ha motivo di dubitare che la dichiarazione resa da tali persone per esimersi dal deporre sia infondata, provvede agli accertamenti necessari. Se risulta infondata, ordina che il testimone deponga.

3. Le disposizioni previste dai commi 1 e 2 si applicano ai giornalisti professionisti iscritti nell'albo professionale, relativamente ai nomi delle persone dalle quali i medesimi hanno avuto notizie di carattere fiduciario nell'esercizio della loro professione. Tuttavia se le notizie sono indispensabili ai fini della prova del reato per cui si procede e la loro veridicità può essere accertata solo attraverso l'identificazione della fonte della notizia, il giudice ordina al giornalista di indicare la fonte delle sue informazioni.



Article 201 Office secret²⁰⁶

1. Except in cases where they are obliged to report to the judicial authority, public officials, public employees and persons in charge of a public service are obliged to refrain from giving evidence on facts known for reasons of their office which must remain secret.
2. The provisions of article 200 paragraphs 2 and 3 apply.

Article 202 State Secret²⁰⁷

1. Public officials, public employees and persons in charge of a public service are obliged to refrain from testifying on facts covered by state secrecy.
2. If the witness opposes a state secret, the judicial authority informs the President of the Council of Ministers accordingly, for the purpose of any confirmation, suspending any initiative aimed at acquiring the information covered by the secret.
3. If the secret is confirmed and knowledge of what is covered by the state secret is essential for the definition of the process, the judge declares that there is no need to proceed for the existence of the state secret.
4. If within thirty days of notification of the request the President of the Council of Ministers does not confirm the secrecy, the judicial authority acquires the information and provides for the further course of the proceedings.

²⁰⁶ Art. 201. Segreto di ufficio.

1. Salvi i casi in cui hanno l'obbligo di riferirne all'autorità giudiziaria, i pubblici ufficiali, i pubblici impiegati e gli incaricati di un pubblico servizio hanno l'obbligo di astenersi dal deporre su fatti conosciuti per ragioni del loro ufficio che devono rimanere segreti.
2. Si applicano le disposizioni dell'articolo 200 commi 2 e 3.

²⁰⁷ Art. 202. Segreto di Stato.

1. I pubblici ufficiali, i pubblici impiegati e gli incaricati di un pubblico servizio hanno l'obbligo di astenersi dal deporre su fatti coperti dal segreto di Stato.
2. Se il testimone oppone un segreto di Stato, l'autorità giudiziaria ne informa il Presidente del Consiglio dei Ministri, ai fini dell'eventuale conferma, sospendendo ogni iniziativa volta ad acquisire la notizia oggetto del segreto.
3. Qualora il segreto sia confermato e per la definizione del processo risulti essenziale la conoscenza di quanto coperto dal segreto di Stato, il giudice dichiara non doversi procedere per l'esistenza del segreto di Stato.
4. Se entro trenta giorni dalla notificazione della richiesta il Presidente del Consiglio dei Ministri non dà conferma del segreto, l'autorità giudiziaria acquisisce la notizia e provvede per l'ulteriore corso del procedimento.
5. L'opposizione del segreto di Stato, confermata con atto motivato dal Presidente del Consiglio dei Ministri, inibisce all'autorità giudiziaria l'acquisizione e l'utilizzazione, anche indiretta, delle notizie coperte dal segreto.
6. Non è, in ogni caso, precluso all'autorità giudiziaria di procedere in base a elementi autonomi e indipendenti dagli atti, documenti e cose coperti dal segreto.
7. Quando è sollevato conflitto di attribuzione nei confronti del Presidente del Consiglio dei Ministri, qualora il conflitto sia risolto nel senso dell'insussistenza del segreto di Stato, il Presidente del Consiglio dei Ministri non può più opporlo con riferimento al medesimo oggetto. Qualora il conflitto sia risolto nel senso della sussistenza del segreto di Stato, l'autorità giudiziaria non può né acquisire né utilizzare, direttamente o indirettamente, atti o documenti sui quali è stato opposto il segreto di Stato.
8. In nessun caso il segreto di Stato è opponibile alla Corte costituzionale. La Corte adotta le necessarie garanzie per la segretezza del procedimento.

5. The opposition of the state secret, confirmed with a motivated act by the President of the Council of Ministers, prevents the judicial authority from acquiring and using, even indirectly, the information covered by the secret.

6. In any case, the judicial authority is not precluded from proceeding on the basis of autonomous and independent elements from the deeds, documents and things covered by secrecy.

7. When a conflict of attribution is raised against the President of the Council of Ministers, if the conflict is resolved in the sense of the inexistence of state secrets, the President of the Council of Ministers can no longer oppose it with reference to the same object. If the conflict is resolved in the sense of the existence of the state secret, the judicial authority can neither acquire nor use, directly or indirectly, deeds or documents on which the state secret has been opposed.

8. In no case can the state secret be opposed to the Constitutional Court. The Court adopts the necessary guarantees for the secrecy of the proceedings.

Article 203²⁰⁸ Informants of the judicial police and security services

1. The judge may not oblige judicial police officers and agents as well as personnel employed by the military or democratic intelligence and security services to disclose the names of their informants. If they are not examined as witnesses, the information they provide cannot be acquired or used.

1-bis. The unusability also operates in the phases other than the hearing, if the informants have not been questioned or heard for summary information.

Article 205 Taking the testimony of the President of the Republic and of great officials of the State

1. The testimony of the President of the Republic is taken in the seat in which he exercises the function of Head of State.

2. If the testimony of one of the presidents of the chambers or of the President of the Council of Ministers or of the Constitutional Court is to be taken, these may ask to be examined in the place where they exercise their office, in order to ensure continuity and regularity of the function they are responsible for.

3. The judge proceeds in the ordinary forms when he deems it indispensable for one of the persons indicated in paragraph 2 to appear to carry out an act of recognition or comparison or for other needs.

²⁰⁸ **Art. 203. Informatori della polizia giudiziaria e dei servizi di sicurezza.**

1. Il giudice non può obbligare gli ufficiali e gli agenti di polizia giudiziaria nonché il personale dipendente dai servizi per le informazioni e la sicurezza militare o democratica a rivelare i nomi dei loro informatori. Se questi non sono esaminati come testimoni, le informazioni da essi fornite non possono essere acquisite né utilizzate.

1-bis. L'inutilizzabilità opera anche nelle fasi diverse dal dibattimento, se gli informatori non sono stati interrogati né assunti a sommarie informazioni.

Article 206²⁰⁹ Taking the testimony of diplomatic agents

1. If a diplomatic agent or person in charge of a diplomatic mission abroad is to be examined during his stay outside the territory of the State, the request for examination is transmitted, through the ministry of grace and justice, to the local consular authority. However, the ordinary forms are followed in the cases provided for by article 205, paragraph 3.
2. International conventions and customs are observed to receive the depositions of diplomatic agents of the Holy See accredited to the Italian State or diplomatic agents of a foreign State accredited to the Italian State or the Holy See.

(2) Provisions on Lifting a legal (professional) privilege**Article 200²¹⁰ Professional secrecy**

[...] 2. If the judge has reason to doubt that the declaration made by such persons to refrain from testifying is unfounded, he shall make the necessary investigations. If it turns out to be unfounded, order the witness to testify. [...]

Article 204²¹¹ Exclusion of secrecy

1. They cannot be subject to the secrecy provided for by Art. 201, 202 and 203 facts, news or documents concerning crimes aimed at the violation of the constitutional order

²⁰⁹ Art. 206. Assunzione della testimonianza di agenti diplomatici.

1. Se deve essere esaminato un agente diplomatico o l'incaricato di una missione diplomatica all'estero durante la sua permanenza fuori dal territorio dello Stato, la richiesta per l'esame è trasmessa, per mezzo del ministero di grazia e giustizia, all'autorità consolare del luogo. Si procede tuttavia nelle forme ordinarie nei casi previsti dall'articolo 205 comma 3.
2. Per ricevere le deposizioni di agenti diplomatici della Santa Sede accreditati presso lo Stato italiano ovvero di agenti diplomatici di uno Stato estero accreditati presso lo Stato italiano o la Santa sede si osservano le convenzioni e le consuetudini internazionali.

²¹⁰ Art. 200. Segreto professionale.

2. Il giudice, se ha motivo di dubitare che la dichiarazione resa da tali persone per esimersi dal deporre sia infondata, provvede agli accertamenti necessari. Se risulta infondata, ordina che il testimone deponga.

²¹¹ Art. 204. Esclusione del segreto.

1. Non possono essere oggetto del segreto previsto dagli artt. 201, 202 e 203 fatti, notizie o documenti concernenti reati diretti all'avversione dell'ordinamento costituzionale nonché i delitti previsti dagli articoli 285, 416-bis, 416-ter e 422 del codice penale. (1) Se viene opposto il segreto, la natura del reato è definita dal giudice. Prima dell'esercizio dell'azione penale provvede il giudice per le indagini preliminari su richiesta di parte.
 - 1-bis. Non possono essere oggetto del segreto previsto dagli articoli 201, 202 e 203 fatti, notizie o documenti concernenti le condotte poste in essere da appartenenti ai servizi di informazione per la sicurezza. Si considerano violazioni della predetta disciplina le condotte per le quali, essendo stata esperita l'apposita procedura prevista dalla legge, risulta esclusa l'esistenza della speciale causa di giustificazione. (2)
 - 1-ter. Il segreto di Stato non può essere opposto o confermato ad esclusiva tutela della classifica di segretezza o in ragione esclusiva della natura del documento, atto cosa oggetto della classifica. (2)
 - 1-quater. In nessun caso il segreto di Stato è opponibile alla Corte costituzionale. La Corte adotta le necessarie garanzie per la segretezza del procedimento. (2)
 - 1-quinquies. Quando il Presidente del Consiglio dei ministri non ritenga di confermare il segreto di Stato, provvede, in qualità di Autorità nazionale per la sicurezza, a declassificare gli atti, i documenti, le cose o i luoghi oggetto di classifica di segretezza, prima che siano messi a disposizione dell'autorità giudiziaria competente. (2)
2. Del provvedimento che rigetta l'eccezione di segretezza è data comunicazione al Presidente del Consiglio dei Ministri.

as well as the crimes provided for by articles 285, 416-bis, 416-ter and 422 of the criminal code. If secrecy is opposed, the nature of the offense is defined by the judge. Before the prosecution is exercised, the judge provides for preliminary investigations at the request of a party.

1-bis. Facts, news or documents concerning the conduct carried out by members of the security information services cannot be subject to the secrecy provided for in articles 201, 202 and 203. Conducts for which, having been carried out the appropriate procedure provided for by law, the existence of a special cause of justification is excluded, are considered to be violations of the aforementioned discipline.

1-ter. State secrecy may not be opposed or confirmed for the exclusive protection of the secrecy classification or for the exclusive reason of the nature of the document, which is the object of the classification.

1-quater. In no case can the state secret be opposed to the Constitutional Court. The Court adopts the necessary guarantees for the secrecy of the proceedings.

1-quinquies. When the President of the Council of Ministers does not deem to confirm the state secrets, he proceeds, as National Security Authority, to declassify the deeds, documents, things or places subject to classification of secrecy, before they are put to disposition of the competent judicial authority.

2. The provision that rejects the objection of secrecy is communicated to the President of the Council of Ministers.

bb. Spousal privilege

- 5 Spousal privilege in Italian criminal procedure reflects the principle that certain **close family members**, particularly spouses, enjoy protection from the obligation to testify, safeguarding family unity and preventing self-incrimination through marital ties. The EDP and during an EPPO trial the court **must inform the person of this right** before questioning.

(1) Provisions in Italian law

- 6 **Article 199 Italian Code of Criminal Procedure – Right of Close Relatives to Abstain from Testifying**

1. The close relatives of the defendant, as defined in Article 307 of the Criminal Code, are not obliged to testify as witnesses. They must, however, testify if they have filed a criminal report (Articles 331–333 c.p.p.), a complaint (Articles 336–340 c.p.p.) or a petition (Article 341 c.p.p.), or if they themselves or one of their close relatives are victims of the offence (Article 90 c.p.p.).

2. The judge, under penalty of nullity (Articles 177–186 c.p.p.), must inform such persons of their right to abstain and expressly ask whether they wish to exercise this right before taking their testimony.

3. The provisions of paragraphs 1 and 2 also apply to persons related to the defendant by adoption. They also apply, limited to facts learned during cohabitation, to:

- a) a person cohabiting with the defendant as a spouse, even if not married;
- b) a legally separated spouse;
- c) a person against whom a judgment of annulment, dissolution, or termination of the civil effects of the marriage or same-sex civil union contracted with the defendant has been issued.

(2) Provisions on lifting a spousal privilege

The spousal privilege under Art. 199 c.p.p. is not absolute. It is lifted in situations expressly provided by law, particularly where the spouse or close relative has an obligation due to serious crimes. 7

(3) National legislation

Italian criminal procedure enshrines the privilege against self-incrimination as a core safeguard, ensuring that a suspect or accused cannot be compelled to provide statements against themselves and that any self-incriminating declarations are strictly regulated in their admissibility (Arts. 62, 63, 293 c.p.p.). 8

cc. Privilege against self-incrimination

(1) Enshrinement in Italian law

Article 62 CPC²¹² Prohibition of testimony on the statements of the accused

1. The statements made in any case during the proceedings by the accused or by the person being investigated cannot be the subject of testimony.

2. The prohibition extends to declarations, however unusable, made by the accused in the course of therapeutic programs aimed at reducing the risk that he commits sexual crimes against minors. 9

²¹² **Art. 62. Codice di procedura penale** Divieto di testimonianza sulle dichiarazioni dell'imputato.

1. Le dichiarazioni comunque rese nel corso del procedimento dall'imputato o dalla persona sottoposta alle indagini non possono formare oggetto di testimonianza.

2. Il divieto si estende alle dichiarazioni, comunque inutilizzabili, rese dall'imputato nel corso di programmi terapeutici diretti a ridurre il rischio che questi commetta delitti sessuali a danno di minori. (

Article 63 CPC²¹³ Self incriminating statements.

1. If before the judicial authority or the judicial police a person not accused or a person not subject to investigation makes statements showing evidence of own guilt, the proceeding authority interrupts the examination, warning him that following such statements he may be investigated and invites him to appoint a lawyer. Previous statements cannot be used against the person who made them.
2. If the person was to be heard from the outset as a defendant or as a person under investigation, his statements cannot be used.

- 10** Under Arts. 62 and 63 c.p.p., statements made by an accused or suspect cannot be used as testimony against them, including those given during therapeutic programs aimed at preventing sexual offences against minors, which will not concern EPPO. Moreover, if a non-suspect makes **self-incriminating statements, questioning must stop**, the person must be warned and offered legal counsel, any prior statements remain unusable.

Article 293 CPC Executive obligations.

1. Without prejudice to the provisions of article 156, the officer or agent in charge of executing the order that ordered the **pre-trial detention** shall deliver to the **accused a copy of the provision** together with a written communication, drawn up in a clear and precise form and, for the accused who does not know the Italian language, translated into a language he understands, with which he informs him:²¹⁴

²¹³ **Art. 63. Codice di procedura penale** Dichiarazioni indizianti.

1. Se davanti all'autorità giudiziaria o alla polizia giudiziaria una persona non imputata ovvero una persona non sottoposta alle indagini rende dichiarazioni dalle quali emergono indizi di reità a suo carico, l'autorità procedente ne interrompe l'esame, avvertendola che a seguito di tali dichiarazioni potranno essere svolte indagini nei suoi confronti e la invita a nominare un difensore. Le precedenti dichiarazioni non possono essere utilizzate contro la persona che le ha rese.

2. Se la persona doveva essere sentita sin dall'inizio in qualità di imputato o di persona sottoposta alle indagini, le sue dichiarazioni non possono essere utilizzate.

²¹⁴ **Art. 293. Codice di procedura penale** Adempimenti esecutivi.

1. Salvo quanto previsto dall'articolo 156, l'ufficiale o l'agente incaricato di eseguire l'ordinanza che ha disposto la custodia cautelare consegna all'imputato copia del provvedimento unitamente a una comunicazione scritta, redatta in forma chiara e precisa e, per l'imputato che non conosce la lingua italiana, tradotta in una lingua a lui comprensibile, con cui lo informa:

- a) della facoltà di nominare un difensore di fiducia e di essere ammesso al patrocinio a spese dello Stato nei casi previsti dalla legge;
- b) del diritto di ottenere informazioni in merito all'accusa;
- c) del diritto all'interprete ed alla traduzione di atti fondamentali;
- d) del diritto di avvalersi della facoltà di non rispondere;
- e) del diritto di accedere agli atti sui quali si fonda il provvedimento;
- f) del diritto di informare le autorità consolari e di dare avviso ai familiari;
- g) del diritto di accedere all'assistenza medica di urgenza;

- a) of the **right to appoint a trusted lawyer** and to be admitted to legal aid in the cases provided for by law;
- b) the right to obtain information on the accusation;
- c) the right to an interpreter and to the translation of fundamental acts;
- d) the **right not to answer**;
- e) the **right to access the documents** on which the provision is based;
- f) the right to inform the consular authorities and to give notice to family members;
- g) the right to access emergency medical assistance;
- h) the right to be brought before the judicial authority no later than five days from the start of the execution, if the measure applied is that of pre-trial custody in prison or no later than ten days if the person is subjected to another precautionary measure;
- i) the right to appear before the judge to carry out the interrogation, to challenge the order that establishes the precautionary measure and to request its replacement or revocation.

1-bis. If the written communication referred to in paragraph 1 is not readily available in a language understandable to the accused, the information is provided orally, without prejudice to the obligation to give written communication to the accused without delay.

1-ter. The officer or agent in charge of executing the order immediately informs the trusted defender, if any, or that of the office designated pursuant to Article 97 and draws up a report of all the operations carried out, mentioning the delivery of the communication referred to in paragraph 1 or of the oral information provided pursuant to paragraph 1-bis. The report is immediately sent to the judge who issued the order and to the public prosecutor.

h) del diritto di essere condotto davanti all'autorità giudiziaria non oltre cinque giorni dall'inizio dell'esecuzione, se la misura applicata è quella della custodia cautelare in carcere ovvero non oltre dieci giorni se la persona è sottoposta ad altra misura cautelare;

i) del diritto di comparire dinanzi al giudice per rendere l'interrogatorio, di impugnare l'ordinanza che dispone la misura cautelare e di richiederne la sostituzione o la revoca.

1-bis. Qualora la comunicazione scritta di cui al comma 1 non sia prontamente disponibile in una lingua comprensibile all'imputato, le informazioni sono fornite oralmente, salvo l'obbligo di dare comunque, senza ritardo, comunicazione scritta all'imputato.

1-ter. L'ufficiale o l'agente incaricato di eseguire l'ordinanza informa immediatamente il difensore di fiducia eventualmente nominato ovvero quello di ufficio designato a norma dell'articolo 97 e redige verbale di tutte le operazioni compiute, facendo menzione della consegna della comunicazione di cui al comma 1 o dell'informazione orale fornita ai sensi del comma 1-bis. Il verbale è immediatamente trasmesso al giudice che ha emesso l'ordinanza e al pubblico ministero.

2. Le ordinanze che dispongono misure diverse dalla custodia cautelare sono notificate all'imputato.

3. Le ordinanze previste dai commi 1 e 2, dopo la loro notificazione o esecuzione, sono depositate nella cancelleria del giudice che le ha emesse insieme alla richiesta del pubblico ministero e agli atti presentati con la stessa. Avviso del deposito è notificato al difensore. Il difensore ha diritto di esaminare e di estrarre copia dei verbali delle comunicazioni e conversazioni intercettate di cui all'articolo 291, comma 1. Ha in ogni caso diritto alla trasposizione, su supporto idoneo alla riproduzione dei dati, delle relative registrazioni.

4. Copia dell'ordinanza che dispone una misura interdittiva è trasmessa all'organo eventualmente competente a disporre l'interdizione in via ordinaria.

4-bis. Copia dell'ordinanza che dispone la custodia cautelare in carcere nei confronti di madre di prole di minore età è comunicata al procuratore della Repubblica presso il tribunale per i minorenni del luogo di esecuzione della misura.

2. Orders which provide for measures other than pre-trial detention are served on the accused.

3. The orders provided for in paragraphs 1 and 2, after their notification or execution, are deposited in the registry of the judge who issued them together with the request of the public prosecutor and the documents presented with the same. Notice of the deposit is served on the defender. The defender has the right to examine and extract a copy of the minutes of the intercepted communications and conversations referred to in article 291, paragraph 1. he has in any case the right to transpose, on a support suitable for the reproduction of the data, of the relative recordings.

4. A copy of the order that establishes a disqualification measure is sent to the body competent to order the ban in the ordinary way.

4-bis. A copy of the order that provides for the precautionary custody in prison against the mother of minor offspring is communicated to the public prosecutor at the juvenile court in the place of execution of the measure.

(2) National legislation

b) Immunity provisions

- 11 Parliamentary privileges or immunities need, if they are stipulated by national law, to be removed, thus requested to be removed by the competent authority or body. The request has to be done by the head of the EPPO and needs to be officially signed and formally submitted.

12 Italian Constitution

Article 55²¹⁵

Parliament consists of the Chamber of deputies and the Senate of the Republic.

Parliaments shall meet in joint session only in cases established by this Constitution.

Article 64²¹⁶

Each House adopts its own Rules by an absolute majority of its members. The sittings are public; however, each of the Houses and Parliament in joint session may decide to convene a closed session.

²¹⁵ **Art. 55.**

Il Parlamento si compone della Camera dei deputati e del Senato della Repubblica.

Il Parlamento si riunisce in seduta comune dei membri delle due Camere nei soli casi stabiliti dalla Costituzione

²¹⁶ **Art. 64**

Ciascuna Camera adotta il proprio regolamento a maggioranza assoluta dei suoi componenti.

Le sedute sono pubbliche; tuttavia ciascuna delle due Camere e il Parlamento a Camere riunite [cfr. Art. 55 c. 2] possono deliberare di adunarsi in seduta segreta.

Le deliberazioni di ciascuna Camera e del Parlamento non sono valide se non è presente la maggioranza dei loro componenti, e se non sono adottate a maggioranza dei presenti, salvo che la Costituzione prescriva una maggioranza speciale [cfr. artt. 64 c. 1, 73 c. 2, 79 c. 1, 83 c. 3, 90 c. 2, 138 cc. 1, 3].

I membri del Governo, anche se non fanno parte delle Camere, hanno diritto, e se richiesti obbligo, di assistere alle sedute. Devono essere sentiti ogni volta che lo richiedono.

The decisions of each House and of Parliament are not valid if the majority of the members is not present, and if they are not passed by a majority of those present, save for those instances where the Constitution prescribes a special majority. Members of the Government, even when not members of Parliament, have the right, and, when requested, the obligation to attend the sittings. They shall be heard every time they so request.

Article 66²¹⁷

Each House verifies the credentials of its members and the causes of disqualification that may arise at a later stage.

Article 67²¹⁸

Each Member of Parliament represents the Nation and carries out his duties without a binding mandate.

Article 68²¹⁹

Members of Parliament cannot be held accountable for the opinions expressed or votes cast in the performance of their function.

In default of the authorisation of his House, no Member of Parliament may be subjected to personal or home search, nor may he be arrested or otherwise deprived of his personal freedom, nor held in detention, except when a final court sentence is enforced, or when the Member is apprehended in the act of committing an offence for which arrest in flagrante delicto is mandatory.

Such an authorisation shall also be required in order to intercept a Member of Parliament's conversations or communications, or to seize such member's mail.

Article 69²²⁰

Members of Parliament shall receive an indemnity (allowance) established by law.

²¹⁷ **Art. 66.**

Ciascuna Camera giudica dei titoli di ammissione dei suoi componenti e delle cause sopraggiunte di ineleggibilità e di incompatibilità.

²¹⁸ **Art. 67.**

Ogni membro del Parlamento rappresenta la Nazione ed esercita le sue funzioni senza vincolo di mandato.

²¹⁹ **Art. 68.**

I membri del Parlamento non possono essere chiamati a rispondere delle opinioni espresse e dei voti dati nell'esercizio delle loro funzioni.

Senza autorizzazione della Camera alla quale appartiene, nessun membro del Parlamento può essere sottoposto a perquisizione personale o domiciliare, né può essere arrestato o altrimenti privato della libertà personale, o mantenuto in detenzione, salvo che in esecuzione di una sentenza irrevocabile di condanna, ovvero se sia colto nell'atto di commettere un delitto per il quale è previsto l'arresto obbligatorio in flagranza.

Analoga autorizzazione è richiesta per sottoporre i membri del Parlamento ad intercettazione, in qualsiasi forma, di conversazioni o comunicazioni e a sequestro di corrispondenza.

²²⁰ **Art. 69.**

I membri del Parlamento ricevono un'indennità stabilita dalla legge.

Regulation of the Chamber of Deputies²²¹

The Regulations do not contain specific information on immunities or privileges

The Rules of the Senate²²²

The Rules do not contain specific information on immunities or privileges.

c) Immunities and Privileges under union law, para 2

13 Article 29 Issue of the European arrest warrant. Law of the 22 April 2005

1.²²³ The judicial authority competent pursuant to Article 28 shall issue the European arrest warrant when it appears that the accused or convicted person is resident, domiciled or residing in the territory of a Member State of the European Union.

2. When the place of residence, domicile or stay is not known and it is possible that the person is in the territory of a Member State of the European Union, the judicial authority orders the insertion of a specific alert in the SIS, in accordance with the provisions of Article 95 of the Convention of 19 June 1990, implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders, enforced by Law no. 388. An alert in the SIS is equivalent to a European arrest warrant accompanied by the information referred to in Article 30.

3. In the event that the requested person benefits from an immunity or privilege recognized by a State other than that of execution or by an international body, the judicial authority will forward the request for revocation of the privilege or exclusion of the immunity.

14 [Article 29] 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

²²¹ Regolamento Della Camera Dei Deputati (*) Text approved by the Chamber on February 18, 1971 and published in the Gazzetta Journal of 1 March 1971, n. 53, updated with subsequent amendments introduced, as indicated in the footnote for each modified article or paragraph.

²²² Il Regolamento del Senato, www.senato.it/1043. Accessed 30 June 2025.

²²³ **Art. 29.** Emissione del mandato d'arresto europeo. Legge 22 april 2005

1. L'autorità giudiziaria competente ai sensi dell'articolo 28 emette il mandato d'arresto europeo quando risulta che l'imputato o il condannato è residente, domiciliato o dimorante nel territorio di uno Stato membro dell'Unione europea.

2. Quando il luogo della residenza, del domicilio o della dimora non è conosciuto e risulta possibile che la persona si trovi nel territorio di uno Stato membro dell'Unione europea, l'autorità giudiziaria dispone l'inserimento di una specifica segnalazione nel SIS, conformemente alle disposizioni dell'articolo 95 della convenzione del 19 giugno 1990, di applicazione dell'accordo di Schengen del 14 giugno 1985 relativo all'eliminazione graduale dei controlli alle frontiere comuni, resa esecutiva dalla legge 30 settembre 1993, n. 388. Una segnalazione nel SIS equivale a un mandato d'arresto europeo corredato delle informazioni di cui all'articolo 30.

3. Nel caso in cui la persona ricercata benefici di una immunità o di un privilegio riconosciuti da uno Stato diverso da quello di esecuzione ovvero da un organismo internazionale, l'autorità giudiziaria provvede a inoltrare la richiesta di revoca del privilegio o di esclusione dell'immunità.

make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.

Cf. → Article 29 EPPO Regulation and the subsequent analysis. Union law differs from national law and is not researched here in-depth. **Union law contains a** protocol, which will apply if the immunity or a privilege of a Union official needs to be lifted. It is enshrined in the consolidated version of the Treaty on the Functioning of the European Union **Protocol (No 7) on the privileges and immunities of the European Union** (OJ C 326, 26.10.2012, p. 266–272). **15**

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

SECTION 2
Rules on investigation measures and other measures

1. Article 30 Investigation measures and other measures

<p>1. Article 30 Investigation measures and other measures206</p> <p> a) Member States shall ensure that the European Delegated Prosecutors are entitled to order or request.....209</p> <p> aa. Adaption Law of the Member State (<i>Decreto Legislativo</i>, 2 February 2021)209</p> <p> bb. Provision in the CPC210</p> <p> b) Investigation measures (Misura investigativa e altre misure)212</p> <p> aa. Para 1(a).....212</p> <p> (1) Search measures212</p> <p> (a) Search any premises or land212</p> <p> (b) Search any means of transport213</p> <p> (c) Search any private home214</p> <p> (d) Search any clothes and any other personal property214</p> <p> (e) Search any computer system215</p> <p> (2) Conservatory measures217</p>	<p> (a) Necessary to preserve their integrity 217</p> <p> (b) Necessary to avoid the loss 218</p> <p> bb. Para 1(b): Obtainment of the production of any relevant object or document either in its original form or in some other specified form 220</p> <p> cc. Para 1(c)..... 222</p> <p> (1) Obtainment of the production of stored computer data, encrypted or decrypted..... 222</p> <p> (a) General Provisions in the CPC 222</p> <p> (b) Special Provisions in the CPC Tax Code, Digital Evidence Act . 222</p> <p> (2) Obtainment of banking account data and traffic data 223</p> <p> (3) 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)..... 224</p>
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(a) Transposition of this Directive into Italian law	224	and Special Use of Expert Witnesses.....	251
(b) National Provision in relation to Art. 15(1) s. 2 of this Directive	224	aa. Rules Governing the National Procedures	251
dd. Para 1(d) Freezing instrumentalities or proceeds of crime, including assets	225	bb. The Use of OLAF Investigators as Special Witnesses in an EPPO Proceeding.....	255
ee. Para 1(e) Interception of electronic communications to and from the suspect or accused person.....	234		
c) Para 1(f) Track & Trace an Object	243		
d) Para 2: Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation, Art. 29.....	244		
e) Para 3: Conditions/Thresholds for investigation measures.....	248		
aa. Conditions and Limitations for investigation measures of Para 1(c)–(f)	248		
bb. Serious offences Limitation for offences of Para 1(e) and (f).....	249		
f) Notifications according to the last sentence of para. 3	249		
g) Para 4: Any other measure(s) in the EDP’s Member State	249		
h) Para 5: National Procedures and national modalities for taking investigative measures			

1. At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:

(a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;

(b) obtain the production of any relevant object or document either in its original form or in some other specified form;

(c) obtain the production of stored computer data, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council;

(d) freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the Judgment 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.

Italy provides for a whole “bunch” of **investigative measures** in its CPC²²⁴, but further- 1
more provisions can be found in the Anti-Mafia Code, the Tax offences Decrees and the
Legislative Decrees on the Customs Area.

**a) Member States shall ensure that the European Delegated Prosecutors are enti-
tled to order or request**

Did the Italian Legislator ensure that the European Delegated Prosecutors are entitled to 2
order or request the measures in Art. 30 EPPO Regulation? This shall be explored in the
next pArt.

aa. Adaption Law of the Member State (*Decreto Legislativo*, 2 February 2021)

The authorisation of an EDP (the “handling” EDP in one of the MS) to order or request 3
could/should or must be enshrined in the new adaption laws which the Member States
enacted in order to be fully operational for the EPPO and its tasks. As most of the Mem-
ber States either amended their Code of Criminal Procedure or their Code of the Organ-
ization of the Judiciary and/or the Prosecutors Act, the relevant provision(s) is (are) pre-
sented in the following.

National law may impose **specific conditions**, particularly for persons bound by legal 4
confidentiality, and may restrict certain measures especially interceptions and tracking
to serious offences only, with notification to the EPPO. In addition, EDPs can request
any other measures available to national prosecutors in comparable domestic cases, but
only if there are reasonable grounds to believe the measure will yield relevant evidence
and no less intrusive alternative exists. Procedures and modalities follow national pro-
cedural law.

In Italy, such powers derive not only from the Code of Criminal Procedure but also from 5
special legislation, including the Anti-Mafia Code, tax offences decrees, and customs
legislation, and have been specifically integrated into national law via the EPPO adap-
tation decree of 2 February 2021.

²²⁴ Nicolicchia 2017, pp. 25 et seq.

bb. Provision in the CPC

6

Article 51²²⁵

1. The functions of public prosecutor are exercised:

a) in preliminary investigations and in first instance proceedings by the magistrates of the public prosecutor's office at the court [or at the district court] (2) (3);

b) in appeals by the magistrates of the public prosecutor's office at the court of appeal or at the court of cassation.

2. In cases of evocation [372, 412, 413 cpp], the functions provided for by paragraph 1 letter a) are exercised by the magistrates of the general prosecutor's office at the court of appeal. In the cases of evocation provided for by article 371 bis, they are exercised by the magistrates of the national anti-mafia directorate.

3. The functions provided for in paragraph 1 are attributed to the public prosecutor's office before the competent judge pursuant to Chapter II of Title I.

3-bis. When it comes to proceedings for the crimes, committed or attempted, referred to in articles 416, sixth and seventh paragraphs (6), 416, carried out for the purpose of

²²⁵ **Art. 51.**

1. Le funzioni di pubblico ministero sono esercitate:

a) nelle indagini preliminari e nei procedimenti di primo grado dai magistrati della procura della Repubblica presso il tribunale [o presso la pretura](2)(3);

b) nei giudizi di impugnazione dai magistrati della procura generale presso la corte di appello o presso la corte di cassazione(2).

2. Nei casi di avocazione [372, 412, 413 c.p.p.], le funzioni previste dal comma 1 lettera a) sono esercitate dai magistrati della procura generale presso la corte di appello. Nei casi di avocazione previsti dall'articolo 371 bis sono esercitate dai magistrati della direzione nazionale antimafia(4).

3. Le funzioni previste dal comma 1 sono attribuite all'ufficio del pubblico ministero presso il giudice competente a norma del capo II del titolo I(5).

3-bis. Quando si tratta di procedimenti per i delitti, consumati o tentati, di cui agli articoli 416, sesto e settimo comma(6), 416, realizzato allo scopo di commettere taluno dei delitti di cui all'Art. 12, commi 1, 3 e 3-ter, del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286(7), 416, realizzato allo scopo di commettere delitti previsti dagli articoli 473 e 474(8), 600, 601, 602(9), 416 bis, 416 ter, 452 quaterdecies(10) e 630 del codice penale, per i delitti commessi avvalendosi delle condizioni previste dal predetto articolo 416 bis ovvero al fine di agevolare l'attività delle associazioni previste dallo stesso articolo, nonché per i delitti previsti dall'articolo 74 del testo unico approvato con decreto del Presidente della Repubblica 9 ottobre 1990 n. 309 [190 bis, 295, 371 bis, 406 c.p.p.], e dall'articolo 291 quater del testo unico approvato con decreto del Presidente della Repubblica 23 gennaio 1973, n. 43, [e dall'Art. 260 del decreto legislativo 3 aprile 2006 n. 152,](11) le funzioni indicate nel comma 1 lettera a) sono attribuite all'ufficio del pubblico ministero presso il tribunale del capoluogo del distretto nel cui ambito ha sede il giudice competente(12)(13)(14)(15).

3-ter. Nei casi previsti dal comma 3 bis e dai commi 3-quater e 3-quinquies(16), se ne fa richiesta il procuratore distrettuale, il procuratore generale presso la corte di appello può, per giustificati motivi, disporre che le funzioni di pubblico ministero per il dibattimento siano esercitate da un magistrato designato dal procuratore della Repubblica presso il giudice competente(17).

3-quater. Quando si tratta di procedimenti per i delitti consumati o tentati con finalità di terrorismo le funzioni indicate nel comma 1, lettera a), sono attribuite all'ufficio del pubblico ministero presso il tribunale del capoluogo del distretto nel cui ambito ha sede il giudice competente. [Si applicano le disposizioni del comma 3-ter](18)(19).

3-quinquies. Quando si tratta di procedimenti per i delitti, consumati o tentati, di cui agli articoli 414 bis, 600 bis, 600 ter, 600 quater, 600 quater 1, 600 quinquies, 609 undecies, 615 ter, 615 quater, 615 quinquies, 617 bis, , 617 ter, 617 quater, 617 quinquies, 617 sexies, 635 bis, 635 ter, 635 quater, 640 ter e 640 quinquies del codice penale, le funzioni indicate nel comma 1, lettera a), del presente articolo sono attribuite all'ufficio del pubblico ministero presso il tribunale del capoluogo del distretto nel cui ambito ha sede il giudice competente.

committing one of the crimes referred to in Art. 12, paragraphs 1, 3 and 3-ter, of the consolidated text of the provisions concerning the discipline of immigration and rules on the condition of the foreigner, referred to in the Legislative Decree 25 July 1998, n. 286 (7), 416, carried out for the purpose of committing crimes provided for in articles 473 and 474 (8), 600, 601, 602 (9), 416 bis, 416 ter, 452 quaterdecies (10) and 630 of the criminal code, for crimes committed making use of the conditions provided for by the aforementioned article 416 bis or in order to facilitate the activities of the associations provided for by the same article, as well as for the crimes provided for by the article 74 of the consolidated act approved by decree of the President of the Republic October 9, 1990 n. 309 [190 bis, 295, 371 bis, 406 cpp], and by article 291 quater of the consolidated text approved by decree of the President of the Republic January 23, 1973, n. 43, [and by Art. 260 of the Legislative Decree 3 April 2006 n. 152,](11) the functions indicated in paragraph 1 letter a) are attributed to the public prosecutor's office at the court of the capital of the district in which the competent judge is based.

3-ter. In the cases provided for by paragraph 3 bis and paragraphs 3-quater and 3-quinquies (16), if the district attorney requests it, the attorney general at the court of appeal may, for justified reasons, order that the functions of public prosecutor for the trial are exercised by a magistrate appointed by the public prosecutor before the competent judge.

3-quater. When it comes to proceedings for crimes committed or attempted with the aim of terrorism, the functions indicated in paragraph 1, letter a), are attributed to the public prosecutor's office at the court of the district capital in which the competent judge is based. [The provisions of paragraph 3-ter apply].

3-quinquies. In the case of proceedings for the crimes, committed or attempted, referred to in articles 414 bis, 600 bis, 600 ter, 600 quater, 600 quater 1, 600 quinquies, 609 undecies, 615 ter, 615 quater, 615 quinquies, 617 bis,, 617 b, 617 c, 617 d, 617 e, 635 a, 635 b, 635 c, 640 b and 640 dof the Criminal Code, the functions indicated in paragraph 1, letter a) of this article are attributed to the public prosecutor's office at the court of the capital of the district in which the competent judge is based. [...]

Article 190²²⁶ Right to evidence

1. Evidence shall be admitted at the request of a party. The judge shall without delay by order **excluding evidence prohibited by law** and those which are manifestly **superfluous or irrelevant**.

2. The law determines the cases in which evidence shall be admitted *ex officio*.

²²⁶ **Art. 190. c.p.p.**

1. Le prove sono ammesse a richiesta di parte. Il giudice provvede senza ritardo con ordinanza escludendo le prove vietate dalla legge e quelle che manifestamente sono superflue o irrilevanti.

2. La legge stabilisce i casi in cui le prove sono ammesse di ufficio.

3. I provvedimenti sull'ammissione della prova possono essere revocati sentite le parti in contraddittorio.

3. Measures on the admission of evidence may be revoked after the parties have been heard in an adversarial manner.

- 7 The last rules mentioned above are highly important for any EDP, emphasizing that EDPs and the investigative staff need to obey the rule to **produce lawful evidence** in any case in order to foster the usability of the evidence in court (in a PIF case).

b) Investigation measures (Misure investigative e altre misure)

(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;

aa. Para 1(a)

(1) Search measures

- 8 Searches and inspections are ordered by **reasoned decree** when needed to ascertain crime traces or secure items (Art. 244, 247(2) CPP). Inspections of premises or things include descriptive/photographic and IT-forensic operations with data-integrity safeguards (Arts. 244(2), 246). **Local searches** require delivery of the decree and notice of the right to assistance; present persons may be retained temporarily to complete operations (Arts. 250, 246(2)). **House searches** observe **time limits** (07:00–20:00), save written urgency (Art. 251). Personal searches require prior notice and respect for dignity/modesty (Art. 249). IT/telematics searches are permitted on well-founded grounds with measures preserving original data (Art. 247(1-bis)). Execution may be delegated to judicial police (Art. 247(3)).

(a) Search any premises or land

9 **Article 244²²⁷ Cases and forms of inspections**

1. The inspection of persons, places and objects shall be ordered by a reasoned decree when it is necessary to ascertain the traces and other material effects of the offence.
2. If the offence has left no traces or material effects, or if these have disappeared, been erased, dispersed, altered or removed, the judicial authority shall describe the current condition and, insofar as possible, verify the previous one, also seeking to identify the manner, time and causes of any changes. The judicial authority may order the taking of

²²⁷ **Art. 244. Casi e forme delle ispezioni. c.p.p.**

1. L'ispezione delle persone, dei luoghi e delle cose è disposta con decreto motivato quando occorre accertare le tracce e gli altri effetti materiali del reato.

2. Se il reato non ha lasciato tracce o effetti materiali, o se questi sono scomparsi o sono stati cancellati o dispersi, alterati o rimossi, l'autorità giudiziaria descrive lo stato attuale e, in quanto possibile, verifica quello preesistente, curando anche di individuare modo, tempo e cause delle eventuali modificazioni. L'autorità giudiziaria può disporre rilievi segnaletici, descrittivi e fotografici e ogni altra operazione tecnica, anche in relazione a sistemi informatici o telematici, adottando misure tecniche dirette ad assicurare la conservazione dei dati originali e ad impedirne l'alterazione.

fingerprint, descriptive and photographic records, as well as any other technical operation, including those relating to computer or telematic systems, adopting technical measures designed to ensure the preservation of the original data and to prevent its alteration.

Article 246²²⁸ Inspection of places or things

1. The accused and in any case whoever has the current availability of the place where the inspection is carried out is given, in the act of starting the operations and provided that they are present, a copy of the decree that provides for such an assessment.

2. In proceeding with the inspection of the places, the judicial authority may order, stating the reasons for the provision in the report, that someone does not leave before the operations are concluded and can have the transgressor forced to return to the site.

(b) Search any means of transport

Chapter I Inspections

Article 244²²⁹ Cases and forms of inspections

1. The inspection of persons, places and objects shall be ordered by a reasoned decree when it is necessary to ascertain traces and other material effects of the offence.

2. If the offence has left no traces or material effects, or if these have disappeared or have been erased, dispersed, altered or removed, the judicial authority shall describe the current state and, as far as possible, verify the previous condition, also taking care to determine the manner, time and causes of any changes. The judicial authority may order the taking of fingerprint, descriptive and photographic evidence, as well as any other technical operation, including in relation to computer or telematic systems, adopting technical measures aimed at ensuring the preservation of the original data and preventing its alteration.

10

²²⁸ **Art. 246. Ispezione di luoghi o di cose. c.p.p.**

1. All'imputato e in ogni caso a chi abbia l'attuale disponibilità del luogo in cui è eseguita l'ispezione è consegnata, nell'atto di iniziare le operazioni e sempre che essi siano presenti, copia del decreto che dispone tale accertamento.

2. Nel procedere all'ispezione dei luoghi, l'autorità giudiziaria può ordinare, enunciando nel verbale i motivi del provvedimento, che taluno non si allontani prima che le operazioni siano concluse e può far ricondurre coattivamente sul posto il trasgressore.

²²⁹ **Art. 244. Casi e forme delle ispezioni.**

1. L'ispezione delle persone, dei luoghi e delle cose è disposta con decreto motivato quando occorre accertare le tracce e gli altri effetti materiali del reato.

2. Se il reato non ha lasciato tracce o effetti materiali, o se questi sono scomparsi o sono stati cancellati o dispersi, alterati o rimossi, l'autorità giudiziaria descrive lo stato attuale e, in quanto possibile, verifica quello preesistente, curando anche di individuare modo, tempo e cause delle eventuali modificazioni. L'autorità giudiziaria può disporre rilievi segnaletici, descrittivi e fotografici e ogni altra operazione tecnica, anche in relazione a sistemi informatici o telematici, adottando misure tecniche dirette ad assicurare la conservazione dei dati originali e ad impedirne l'alterazione.

Article 246 Inspection of places or things.

1. The accused and in any case whoever has the current availability of the place where the inspection is carried out is given, in the act of starting the operations and provided that they are present, a copy of the decree that provides for such an assessment.
2. In proceeding with the inspection of the places, the judicial authority may order, stating the reasons for the provision in the report, that someone does not leave before the operations are concluded and can have the transgressor forced to return to the site.

(c) Search any private home

11 Article 251²³⁰ House searches. Time limits

1. The search in a house or in closed places adjacent to it cannot be started before seven o'clock and after twenty o'clock.
2. However, in urgent cases, the judicial authority may order in writing that the search be carried out outside the aforementioned time limits.

(d) Search any clothes and any other personal property

12 Article 249²³¹ Personal searches

1. Before proceeding with the personal search, a copy of the decree is given to the person concerned, with the notice of the right to be assisted by a trusted person, provided that this is readily available and suitable in accordance with Article 120.
2. The search is carried out with respect for the dignity and, as far as possible, the modesty of those who are subjected to it.

²³⁰ **Art. 251. Perquisizioni nel domicilio. Limiti temporali.**

1. La perquisizione in un'abitazione o nei luoghi chiusi adiacenti a essa non può essere iniziata prima delle ore sette e dopo le ore venti.
2. Tuttavia nei casi urgenti l'autorità giudiziaria può disporre per iscritto che la perquisizione sia eseguita fuori dei suddetti limiti temporali.

²³¹ **Art. 249. Perquisizioni personali c.p.p.**

1. Prima di procedere alla perquisizione personale e' consegnata una copia del decreto all'interessato, con l'avviso della facolta' di farsi assistere da persona di fiducia, purché questa sia prontamente reperibile e idonea a norma dell'articolo 120.
2. La perquisizione e' eseguita nel rispetto della dignita' e, nei limiti del possibile, del pudore di chi vi e' sottoposto.

Article 250²³² Local searches

1. In the act of starting the operations, a copy of the local search decree is delivered to the accused, if present, and to anyone who has the current availability of the place, with the notice of the right to be represented or assisted by a trusted person, provided that this is readily available and suitable in accordance with Article 120.
2. If the persons indicated in paragraph 1 are missing, the copy is delivered and the notice is addressed to a relative, a cohabitant or a collaborator or, failing that, to the porter or whoever takes his place.
3. The judicial authority, in proceeding with the local search, may order by reasoned decree that people present or who have arrived are searched, when it believes that they can conceal the body of the crime or things pertinent to the crime. It can also order, stating the reasons for the provision in the minutes, that someone does not leave before the operations are concluded. The offender is detained or forcibly returned to the place.

(e) Search any computer system**Article 247²³³ Cases and forms of searches**

1. When there is well-founded reason to believe that someone conceals the body of the crime or things pertinent to the crime on the person, a personal search is ordered. When there is well-founded reason to believe that such things are in a specific place or that the arrest of the accused or the escaped person can be carried out there, a local search is ordered.
- 1-bis. When there is well-founded reason to believe that data, information, computer programs or traces in any case pertinent to the crime are found in an IT or telematic system, even if protected by security measures, they are searched, adopting technical

13

²³² **Art. 250. Perquisizioni locali c.p.p.**

1. Nell'atto di iniziare le operazioni, copia del decreto di perquisizione locale e' consegnata all'imputato, se presente, e a chi abbia l'attuale disponibilita' del luogo, con l'avviso della facolta' di farsi rappresentare o assistere da persona di fiducia, purché questa sia prontamente reperibile e idonea a norma dell'articolo 120.
2. Se mancano le persone indicate nel comma 1, la copia e' consegnata e l'avviso e' rivolto a un congiunto, un coabitante o un collaboratore ovvero, in mancanza, al portiere o a chi ne fa le veci.
3. L'autorita' giudiziaria, nel procedere alla perquisizione locale, puo' disporre con decreto motivato che siano perquisite le persone presenti o sopraggiunte, quando ritiene che le stesse possano occultare il corpo del reato o cose pertinenti al reato. Puo' inoltre ordinare, enunciando nel verbale i motivi del provvedimento, che taluno non si allontani prima che le operazioni siano concluse. Il trasgressore e' trattenuto o ricondotto coattivamente sul posto.

²³³ **Art. 247. Casi e forme delle perquisizioni c.p.p.**

1. Quando vi e' fondato motivo di ritenere che taluno occulti sulla persona il corpo del reato o cose pertinenti al reato, e' disposta perquisizione personale. Quando vi e' fondato motivo di ritenere che tali cose si trovino in un determinato luogo ovvero che in esso possa eseguirsi l'arresto dell'imputato o dell'evaso, e' disposta perquisizione locale. (1-bis. Quando vi e' fondato motivo di ritenere che dati, informazioni, programmi informatici o tracce comunque pertinenti al reato si trovino in un sistema informatico o telematico, ancorche' protetto da misure di sicurezza, ne e' disposta la perquisizione, adottando misure tecniche dirette ad assicurare la conservazione dei dati originali e ad impedirne l'alterazione.)
2. La perquisizione e' disposta con decreto motivato. 3. L'autorita' giudiziaria puo' procedere personalmente ovvero disporre che l'atto sia compiuto da ufficiali di polizia giudiziaria delegati con lo stesso decreto.

measures aimed at ensuring the conservation of the original data and to prevent it from being altered.

2. The search is ordered by a reasoned decree.

3. The judicial authority can proceed personally or arrange for the act to be carried out by judicial police officers delegated with the same decree.

- 14** As an EDP in Italy, one operates within a Regional Office and as explained in the introduction as a public prosecutor within the framework of the Italian Code of Criminal Procedure (CPC) and then one must always confirm the territorial and subject-matter competence before acting, particularly in cases reserved to the public prosecutor's office at the district capital or to specialised anti-mafia or anti-terrorism offices under Article 51 CPC. The **right to evidence** under Article 190 CPC requires that all evidence be lawfully obtained, relevant, and not manifestly superfluous, with any breach of procedure risking exclusion at trial. Searches and inspections whether of persons, places, means of transport, clothes, personal property, or IT systems must be **ordered by a reasoned written decree** specifying the legal basis, object, and scope, and must respect procedural safeguards.
- 15** General inspection rules in Articles 244 and 246 CPC require that the person in possession or the accused, if present, be given a **copy of the decree at the start of operations**; the authority may require individuals to remain on-site until completion and may order technical, photographic, or **IT-forensic work** with safeguards to preserve original data and prevent alteration. House searches under Article 251 CPC may only start between 07:00 and 20:00 unless a written urgent order allows otherwise; personal searches (Art. 249 CPC) require notice of the right to a trusted person and must respect dignity and modesty; local searches (Art. 250 CPC) follow similar notice rules and may extend to searching persons present if concealment of evidence is suspected.
- 16** IT and telematic searches (Art. 247 CPC) require **well-founded reason**, may include protected systems, and must be executed with forensic measures preserving data integrity. Inspections of means of transport follow the same safeguards as other local searches. While execution may be delegated to the judicial police, the EDP retains responsibility for legality, proportionality, and compliance with all procedural requirements. Careful documentation of grounds, methods, and any ancillary orders is essential to ensure that the evidence collected remains admissible and that the EPPO's case can proceed effectively in court.

(2) Conservatory measures**(a) Necessary to preserve their integrity****Article 253²³⁴ Object and formality of the seizure.**

1. The judicial authority orders, by reasoned decree, the seizure of the body of the crime and of the things pertinent to the crime necessary for ascertaining the facts.
2. The things on which or through which the crime was committed as well as the things that constitute the product, the profit or the price are the body of the crime.
3. The judicial authority or a judicial police officer delegated with the same decree proceeds personally with the seizure.
4. A copy of the seizure decree is delivered to the interested party, if present.

Article 254²³⁵ Seizure of correspondence.

1. From those who provide postal, telegraphic, telematic or telecommunications services, it is allowed to seize letters, folds, parcels, valuables, telegrams and other items of correspondence, even if forwarded electronically, which the judicial authority has founded reason to believe sent by the accused or directed to him, even under a different name or by a different person, or that in any case may have a connection with the crime.
2. When a judicial police officer proceeds with the seizure, he must hand over the seized items of correspondence to the judicial authority, without opening or altering them (2) and without otherwise becoming aware of their content.
3. Papers and other documents seized that do not fall within the seizable correspondence are immediately returned to the entitled person and in any case cannot be used.

17

²³⁴ **Capo III Sequestri****Art. 253. Oggetto e formalità del sequestro.**

1. L'autorità giudiziaria dispone con decreto motivato il sequestro del corpo del reato e delle cose pertinenti al reato necessarie per l'accertamento dei fatti.
2. Sono corpo del reato le cose sulle quali o mediante le quali il reato è stato commesso nonché le cose che ne costituiscono il prodotto, il profitto o il prezzo.
3. Al sequestro procede personalmente l'autorità giudiziaria ovvero un ufficiale di polizia giudiziaria delegato con lo stesso decreto.
4. Copia del decreto di sequestro è consegnata all'interessato, se presente.

²³⁵ **Art. 254. Sequestro di corrispondenza.**

1. Presso coloro che forniscono servizi postali, telegrafici, telematici o di telecomunicazioni è consentito procedere al sequestro di lettere, pieghi, pacchi, valori, telegrammi e altri oggetti di corrispondenza, anche se inoltrati per via telematica, che l'autorità giudiziaria abbia fondato motivo di ritenere spediti dall'imputato o a lui diretti, anche sotto nome diverso o per mezzo di persona diversa, o che comunque possono avere relazione con il reato. (1)
2. Quando al sequestro procede un ufficiale di polizia giudiziaria, questi deve consegnare all'autorità giudiziaria gli oggetti di corrispondenza sequestrati, senza aprirli o alterarli (2) e senza prendere altrimenti conoscenza del loro contenuto.
3. Le carte e gli altri documenti sequestrati che non rientrano fra la corrispondenza sequestrabile sono immediatamente restituiti all'avente diritto e non possono comunque essere utilizzati.

Article 354²³⁶ Urgent investigations on places, things and people. Seizure.

1. The judicial police officers and agents ensure that the traces and things pertaining to the crime are preserved and that the state of places and things is not changed before the intervention of the public prosecutor.
2. If there is a danger that the things, traces and places indicated in paragraph 1 are altered or dispersed or in any case change and the public prosecutor cannot intervene promptly, or has not yet taken over the direction of the investigation, the judicial police officers make the necessary investigations and surveys on the state of places and things. In relation to data, information and computer programs or computer or telematic systems, the officers of the judicial police also adopt the technical measures or issue the necessary prescriptions to ensure their conservation and to prevent their alteration and access and where possible, they are immediately duplicated on suitable supports, by means of a procedure that ensures the conformity of the copy to the original and that it cannot be modified. (1) If necessary, they seize the body of the crime and the things pertaining to it.
3. If the conditions provided for in paragraph 2 are met, the judicial police officers carry out the necessary investigations and surveys on persons other than personal inspection.

(b) Necessary to avoid the loss

18

Article 252²³⁷ Seizure following a search

1. The things found following the search are subject to seizure in compliance with the provisions of articles 259 and 260.

²³⁶ **Art. 354. c.p.p. Accertamenti urgenti sui luoghi, sulle cose e sulle persone. Sequestro.**

1. Gli ufficiali e gli agenti di polizia giudiziaria curano che le tracce e le cose pertinenti al reato siano conservate e che lo stato dei luoghi e delle cose non venga mutato prima dell'intervento del pubblico ministero.

2. Se vi è pericolo che le cose, le tracce e i luoghi indicati nel comma 1 si alterino o si disperdano o comunque si modificano e il pubblico ministero non può intervenire tempestivamente, ovvero non ha ancora assunto la direzione delle indagini, gli ufficiali di polizia giudiziaria compiono i necessari accertamenti e rilievi sullo stato dei luoghi e delle cose. In relazione ai dati, alle informazioni e ai programmi informatici o ai sistemi informatici o telematici, gli ufficiali della polizia giudiziaria adottano, altresì, le misure tecniche o impartiscono le prescrizioni necessarie ad assicurarne la conservazione e ad impedirne l'alterazione e l'accesso e provvedono, ove possibile, alla loro immediata duplicazione su adeguati supporti, mediante una procedura che assicuri la conformità della copia all'originale e la sua immodificabilità. (1) Se del caso, sequestrano il corpo del reato e le cose a questo pertinenti.

3. Se ricorrono i presupposti previsti dal comma 2, gli ufficiali di polizia giudiziaria compiono i necessari accertamenti e rilievi sulle persone diversi dalla ispezione personale.

²³⁷ **Art. 252. Sequestro conseguente a perquisizione.**

1. Le cose rinvenute a seguito della perquisizione sono sottoposte a sequestro con l'osservanza delle prescrizioni degli articoli 259 e 260.

Article 353²³⁸ Acquisition of packages or correspondence.

1. When there is a need to acquire sealed or otherwise closed packages, the judicial police officer transmits them intact to the public prosecutor for possible seizure.
2. If the officer of the judicial police has reasonable grounds to believe that the packages contain information useful for the search and for the assurance of sources of evidence which could be lost due to the delay, he shall inform the public prosecutor in the quickest way. authorise the immediate opening and verification of the content. (1)
3. In the case of letters, folders, parcels, valuables, telegrams or other items of correspondence, even if in electronic form or sent electronically, (2) for which seizure is permitted pursuant to Article 254, in case of urgency, the judicial police officers order the person in charge of the postal, telegraphic, telematic or telecommunication service (3) to suspend the forwarding. If within forty-eight hours from the order of the judicial police the public prosecutor does not order the seizure, the items of correspondence are forwarded.

Article 354²³⁹ Urgent investigations on places, things and people. Seizure.

1. The judicial police officers and agents ensure that the traces and things pertaining to the crime are preserved and that the state of places and things is not changed before the intervention of the public prosecutor.
2. If there is a danger that the things, traces and places indicated in paragraph 1 are altered or dispersed or in any case change and the public prosecutor cannot intervene promptly, or has not yet taken over the direction of the investigation, the judicial police

²³⁸ **Art. 353. Acquisizione di plichi o di corrispondenza.**

1. Quando vi è necessità di acquisire plichi sigillati o altrimenti chiusi, l'ufficiale di polizia giudiziaria li trasmette intatti al pubblico ministero per l'eventuale sequestro.
2. Se ha fondato motivo di ritenere che i plichi contengano notizie utili alla ricerca e all'assicurazione di fonti di prova che potrebbero andare disperse a causa del ritardo, l'ufficiale di polizia giudiziaria informa col mezzo più rapido il pubblico ministero il quale può autorizzarne l'apertura immediata e l'accertamento del contenuto.
- (1) 3. Se si tratta di lettere, pieghi, pacchi, valori, telegrammi o altri oggetti di corrispondenza, anche se in forma elettronica o se inoltrati per via telematica, (2) per i quali è consentito il sequestro a norma dell'articolo 254, gli ufficiali di polizia giudiziaria, in caso di urgenza, ordinano a chi è preposto al servizio postale, telegrafico, telematico o di telecomunicazione (3) di sospendere l'inoltro. Se entro quarantotto ore dall'ordine della polizia giudiziaria il pubblico ministero non dispone il sequestro, gli oggetti di corrispondenza sono inoltrati.

²³⁹ **Art. 354. Accertamenti urgenti sui luoghi, sulle cose e sulle persone. Sequestro.**

1. Gli ufficiali e gli agenti di polizia giudiziaria curano che le tracce e le cose pertinenti al reato siano conservate e che lo stato dei luoghi e delle cose non venga mutato prima dell'intervento del pubblico ministero.
2. Se vi è pericolo che le cose, le tracce e i luoghi indicati nel comma 1 si alterino o si disperdano o comunque si modificano e il pubblico ministero non può intervenire tempestivamente, ovvero non ha ancora assunto la direzione delle indagini, gli ufficiali di polizia giudiziaria compiono i necessari accertamenti e rilievi sullo stato dei luoghi e delle cose. In relazione ai dati, alle informazioni e ai programmi informatici o ai sistemi informatici o telematici, gli ufficiali della polizia giudiziaria adottano, altresì, le misure tecniche o impartiscono le prescrizioni necessarie ad assicurarne la conservazione e ad impedirne l'alterazione e l'accesso e provvedono, ove possibile, alla loro immediata duplicazione su adeguati supporti, mediante una procedura che assicuri la conformità della copia all'originale e la sua immodificabilità. (1) Se del caso, sequestrano il corpo del reato e le cose a questo pertinenti.
3. Se ricorrono i presupposti previsti dal comma 2, gli ufficiali di polizia giudiziaria compiono i necessari accertamenti e rilievi sulle persone diversi dalla ispezione personale.

officers make the necessary investigations and surveys on the state of places and things. In relation to data, information and computer programs or computer or telematic systems, the officers of the judicial police also adopt the technical measures or issue the necessary prescriptions to ensure their conservation and to prevent their alteration and access and where possible, they are immediately duplicated on suitable supports, by means of a procedure that ensures the conformity of the copy to the original and that it cannot be modified. (1) If necessary, they seize the body of the crime and the things pertaining to it.

3. If the conditions provided for in paragraph 2 are met, the judicial police officers carry out the necessary investigations and surveys on persons other than personal inspection.

bb. Para 1(b): Obtainment of the production of any relevant object or document either in its original form or in some other specified form

(b) obtain the production of any relevant object or document either in its original form or in some other specified form;

19

- its original form

- in some other specified form

Article 254-bis²⁴⁰

Seizure of IT data from IT, telematic and telecommunication service providers.

1. The judicial authority, when ordering the seizure, from the suppliers of IT, telematic or telecommunications services, of the data held by them, including traffic or location data, may establish, for needs related to the regular provision of the same services, that their acquisition takes place through a copy of them on an adequate support, with a procedure that ensures the conformity of the acquired data with the original ones and their immutability. In this case, however, the service provider is ordered to adequately preserve and protect the original data.

²⁴⁰ **Art. 353. Acquisizione di plichi o di corrispondenza.**

1. Quando vi è necessità di acquisire plichi sigillati o altrimenti chiusi, l'ufficiale di polizia giudiziaria li trasmette intatti al pubblico ministero per l'eventuale sequestro.

2. Se ha fondato motivo di ritenere che i plichi contengano notizie utili alla ricerca e all'assicurazione di fonti di prova che potrebbero andare disperse a causa del ritardo, l'ufficiale di polizia giudiziaria informa col mezzo più rapido il pubblico ministero il quale può autorizzarne l'apertura immediata e l'accertamento del contenuto.

3. Se si tratta di lettere, pieghi, pacchi, valori, telegrammi o altri oggetti di corrispondenza, anche se in forma elettronica o se inoltrati per via telematica, per i quali è consentito il sequestro a norma dell'articolo 254, gli ufficiali di polizia giudiziaria, in caso di urgenza, ordinano a chi è preposto al servizio postale, telegrafico, telematico o di telecomunicazione di sospendere l'inoltro. Se entro quarantotto ore dall'ordine della polizia giudiziaria il pubblico ministero non dispone il sequestro, gli oggetti di corrispondenza sono inoltrati.

<p>production of any relevant document</p> <p>- its original form</p> <p>- in some other specified form</p>	<p>Article 258</p> <p>Copies of the documents seized.²⁴¹</p> <p>1. The judicial authority can have a copy of the seized deeds and documents, returning the originals, and, when the seizure of these is maintained, it can authorise the registry or the secretariat to issue an authentic copy free of charge to those who legitimately held them.</p> <p>2. Public officials may issue copies, extracts or certificates of the documents returned to them by the judicial authority in original or in copy, but they must mention in such copies, extracts or certificates of the existing seizure.</p> <p>3. In any case, the person or office where the seizure was carried out has the right to have a copy of the report of the seizure.</p> <p>4. If the seized document is part of a volume or register from which it cannot be separated and the judicial authority does not intend to have a copy extracted, the entire volume or register remains in judicial deposit. The public official, with the authorisation of the judicial authority, issues copies, extracts or certificates of the parts of the volume or of the register not subject to seizure to the interested parties, making mention of the partial seizure in copies, extracts and certificates.</p>
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²⁴¹ **Art. 258. Copie dei documenti sequestrati.**

1. L'autorità giudiziaria può fare estrarre copia degli atti e dei documenti sequestrati, restituendo gli originali, e, quando il sequestro di questi è mantenuto, può autorizzare la cancelleria o la segreteria a rilasciare gratuitamente copia autentica a coloro che li detenevano legittimamente.

2. I pubblici ufficiali possono rilasciare copie, estratti o certificati dei documenti loro restituiti dall'autorità giudiziaria in originale o in copia, ma devono fare menzione in tali copie, estratti o certificati del sequestro esistente.

3. In ogni caso la persona o l'ufficio presso cui fu eseguito il sequestro ha diritto di avere copia del verbale dell'avvenuto sequestro.

4. Se il documento sequestrato fa parte di un volume o di un registro da cui non possa essere separato e l'autorità giudiziaria non ritiene di farne estrarre copia, l'intero volume o registro rimane in deposito giudiziario. Il pubblico ufficiale addetto, con l'autorizzazione dell'autorità giudiziaria, rilascia agli interessati che li richiedono copie, estratti o certificati delle parti del volume o del registro non soggette al sequestro, facendo menzione del sequestro parziale nelle copie, negli estratti e nei certificati.

cc. Para 1(c)

(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;

(1) Obtainment of the production of stored computer data, encrypted or decrypted

(a) General Provisions in the CPC

20 Article 254-bis²⁴² Seizure of IT data from IT, telematic and telecommunication service providers.

1. The judicial authority, when ordering the seizure, from the suppliers of IT, telematic or telecommunications services, of the data held by them, including traffic or location data, may establish, for needs related to the regular provision of the same services, that their acquisition takes place through a copy of them on an adequate support, with a procedure that ensures the conformity of the acquired data with the original ones and their immutability. In this case, however, the service provider is ordered to adequately preserve and protect the original data.

(b) Special Provisions in the CPC Tax Code, Digital Evidence Act

21 Italy has no special Digital Evidence Act. Instead the c.p.p. and the other codes mentioned below Article 26 EPPO Regulation above may apply.

²⁴² **Art. 254-bis. Sequestro di dati informatici presso fornitori di servizi informatici, telematici e di telecomunicazioni.**

1. L'autorità giudiziaria, quando dispone il sequestro, presso i fornitori di servizi informatici, telematici o di telecomunicazioni, dei dati da questi detenuti, compresi quelli di traffico o di ubicazione, può stabilire, per esigenze legate alla regolare fornitura dei medesimi servizi, che la loro acquisizione avvenga mediante copia di essi su adeguato supporto, con una procedura che assicuri la conformità dei dati acquisiti a quelli originali e la loro immodificabilità. In questo caso è, comunque, ordinato al fornitore dei servizi di conservare e proteggere adeguatamente i dati originali.

(2) Obtainment of banking account data and traffic data

Article 255²⁴³ Seizure from banks

1. The judicial authority may proceed with the seizure from banks of documents, securities, values, sums deposited in current accounts and anything else, even if contained in safety deposit boxes, when it has well-founded reason to believe that they are pertinent to the crime, although they do not belong to the accused or are not registered in his name.

Article 234²⁴⁴ Documents

1. The acquisition of writings or other documents representing facts, persons or things by photography, cinematography, phonography or any other means shall be permitted.
2. When the original of a document to be used is for any reason destroyed, lost or stolen and it is not possible to recover it, a copy may be taken.
3. The acquisition of documents containing information about rumours current in the public about the facts to be dealt with in the proceedings or about the general character of the parties, witnesses, experts and experts is prohibited.

22

A recent debate related to the use of digital evidence in the form of WhatsApp messages. The **Court of Cassation** ruled that these messages are treated as documents under Art. 234 c.p.p. if they are available as screenshots.²⁴⁵

23

²⁴³ **Art. 255. Sequestro presso banche.**

1. L'autorità giudiziaria può procedere al sequestro presso banche di documenti, titoli, valori, somme depositate in conto corrente e di ogni altra cosa, anche se contenuti in cassette di sicurezza, quando abbia fondato motivo di ritenere che siano pertinenti al reato, quantunque non appartengano all'imputato o non siano iscritti al suo nome.

²⁴⁴ **Art. 234 c.p.p.**

1. E' consentita l'acquisizione di scritti o di altri documenti che rappresentano fatti, persone o cose mediante la fotografia, la cinematografia, la fonografia o qualsiasi altro mezzo.
2. Quando l'originale di un documento del quale occorre far uso e' per qualsiasi causa distrutto, smarrito o sottratto e non e' possibile recuperarlo, puo' esserne acquisita copia.
3. E' vietata l'acquisizione di documenti che contengono informazioni sulle voci correnti nel pubblico intorno ai fatti di cui si tratta nel processo o sulla moralita' in generale delle parti, dei testimoni, dei consulenti tecnici e dei periti.

²⁴⁵ Corte di Cassazione, Sentenza n. 22417 del 8 giugno 2022 discusses the importance of WhatsApp messages and its value in the criminal trial. In fact the Court ruled in line with its previous rulings "Cass. cd Tacchin. 1822/202)."

(3) 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)

(a) Transposition of this Directive into Italian law

24 *Decreto legislativo 30/6/2003, n. 196-Codice in materia di protezione dei dati personali. GURI n° 174 del 29/7/2003 p. 11²⁴⁶ Cf. Art. 13, 21, 22, 58ff.*

(b) National Provision in relation to Art. 15(1) s. 2 of this Directive

25 **Article 58 Applicable provisions**²⁴⁷ [NB: Article amended by decree-law n. 139/2021, converted by law n. 205/2021]

1. To the treatments carried out by the bodies referred to in articles 3, 4 and 6 of the law 24 October 1977, n. 801, or on data covered by a state secret pursuant to article 12 of the same law, the provisions of this code apply only to those things provided for in articles 1 to 6, 11, 14, 15, 31, 33, 58, 154, 160 and 169.

2. The provisions of this code apply only to those indicated in paragraph 1, as well as provisions of Articles 37, 38 and 163.

3. The security measures relating to the data processed by the bodies referred to in paragraph 1 are established and periodically updated by decree of the President of the Council of Ministers, in compliance with the rules governing the matter.

4. By decree of the President of the Council of Ministers, the methods of application of the applicable provisions of this code are identified with reference to the types of data, of interested parties, of executable processing operations and of persons in charge, also in relation to updating and storage.

²⁴⁶ Legislative Decree 30 June 2003, n. 196 "Code regarding the protection of personal data" published in the Official Gazette no. 174 of 29 July 2003 - Ordinary Supplement n. 123.

²⁴⁷ TITOLO III DIFESA E SICUREZZA DELLO STATO CAPO I PROFILI GENERALI

Art. 58. (Disposizioni applicabili)

1. Ai trattamenti effettuati dagli organismi di cui agli articoli 3, 4 e 6 della legge 24 ottobre 1977, n. 801, ovvero sui dati coperti da segreto di Stato ai sensi dell'articolo 12 della medesima legge, le disposizioni del presente codice si applicano limitatamente a quelle previste negli articoli da 1 a 6, 11, 14, 15, 31, 33, 58, 154, 160 e 169.

2. Ai trattamenti effettuati da soggetti pubblici per finalita' di difesa o di sicurezza dello Stato, in base ad espresse disposizioni di legge che prevedano specificamente il trattamento, le disposizioni del presente codice si applicano limitatamente a quelle indicate nel comma 1, nonche' alle disposizioni di cui agli articoli 37, 38 e 163.

3. Le misure di sicurezza relative ai dati trattati dagli organismi di cui al comma 1 sono stabilite e periodicamente aggiornate con decreto del Presidente del Consiglio dei ministri, con l'osservanza delle norme che regolano la materia.

4. Con decreto del Presidente del Consiglio dei ministri sono individuate le modalita' di applicazione delle disposizioni applicabili del presente codice in riferimento alle tipologie di dati, di interessati, di operazioni di trattamento eseguibili e di incaricati, anche in relazione all'aggiornamento e alla conservazione.

See for further information on the following in the footnotes.²⁴⁸

26

dd. Para 1(d) Freezing instrumentalities or proceeds of crime, including assets

(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 Judgment ordering confiscation.

27

Title II Real precautionary measures

28

Article 321²⁴⁹ Object of the preventive seizure

1. When there is a danger that the free availability of something pertaining to the crime could aggravate or prolong the consequences thereof or facilitate the commission of other crimes, at the request of the public prosecutor the judge competent to rule on the merits orders its seizure by decree motivated. Before the prosecution is exercised, the judge for preliminary investigations provides.

2. The judge can also order the seizure of the things that are allowed to be confiscated.

2-bis. In the course of the criminal proceedings relating to crimes provided for in Chapter I of Title II of the Second Book of the Penal Code, the judge shall order the seizure of assets which may be confiscated.

²⁴⁸ For more details on Art. 15 of this Directive, which has been affected by Regulation 2016/679, cf. ECJ, Case C-275/06; Case C-557/07; Joined Cases C-203/15 and C-698/15; Case C-623/17; Joined Cases C-511/18, C-512/18 and C-520/18.

²⁴⁹ **Art. 321. Oggetto del sequestro preventivo.**

1. Quando vi è pericolo che la libera disponibilità di una cosa pertinente al reato possa aggravare o protrarre le conseguenze di esso ovvero agevolare la commissione di altri reati, a richiesta del pubblico ministero il giudice competente a pronunciarsi nel merito ne dispone il sequestro con decreto motivato. Prima dell'esercizio dell'azione penale provvede il giudice per le indagini preliminari.

2. Il giudice può altresì disporre il sequestro delle cose di cui è consentita la confisca.

2-bis. Nel corso del procedimento penale relativo a delitti previsti dal capo I del titolo II del libro secondo del codice penale il giudice dispone il sequestro dei beni di cui è consentita la confisca.

3. Il sequestro è immediatamente revocato a richiesta del pubblico ministero o dell'interessato quando risultano mancanti, anche per fatti sopravvenuti, le condizioni di applicabilità previste dal comma 1. Nel corso delle indagini preliminari provvede il pubblico ministero con decreto motivato, che è notificato a coloro che hanno diritto di proporre impugnazione. Se vi è richiesta di revoca dell'interessato, il pubblico ministero, quando ritiene che essa vada anche in parte respinta, la trasmette al giudice, cui presenta richieste specifiche nonché gli elementi sui quali fonda le sue valutazioni. La richiesta è trasmessa non oltre il giorno successivo a quello del deposito nella segreteria.

3-bis. Nel corso delle indagini preliminari, quando non è possibile, per la situazione di urgenza, attendere il provvedimento del giudice, il sequestro è disposto con decreto motivato dal pubblico ministero. Negli stessi casi, prima dell'intervento del pubblico ministero, al sequestro procedono ufficiali di polizia giudiziaria, i quali, nelle quarantotto ore successive, trasmettono il verbale al pubblico ministero del luogo in cui il sequestro è stato eseguito. Questi, se non dispone la restituzione delle cose sequestrate, richiede al giudice la convalida e l'emissione del decreto previsto dal comma 1 entro quarantotto ore dal sequestro, se disposto dallo stesso pubblico ministero, o dalla ricezione del verbale, se il sequestro è stato eseguito di iniziativa dalla polizia giudiziaria.

3-ter. Il sequestro perde efficacia se non sono osservati i termini previsti dal comma 3-bis ovvero se il giudice non emette l'ordinanza di convalida entro dieci giorni dalla ricezione della richiesta. Copia dell'ordinanza è immediatamente notificata alla persona alla quale le cose sono state sequestrate.

3. The seizure is immediately revoked at the request of the public prosecutor or the interested party when the conditions of applicability provided for in paragraph 1 are missing, also due to facts that have occurred. During the preliminary investigation, the Public Prosecutor shall issue a reasoned decree, which shall be notified to those entitled to challenge it. If there is a request for revocation of the interested party, the public prosecutor, when he considers that it should also be partially rejected, transmits it to the judge, to whom he presents specific requests as well as the elements on which he bases his assessments. The request is sent no later than the day following that of filing in the secretariat.

3-bis. During the preliminary investigations, when it is not possible, due to the urgent situation, to wait for the judge's ruling, the seizure is ordered by decree motivated by the public prosecutor. In the same cases, before the intervention of the public prosecutor, judicial police officers proceed to the seizure, who, in the following forty-eight hours, transmit the report to the public prosecutor of the place where the seizure was carried out. If the latter does not order the return of the seized things, he requests the judge to validate and issue the decree provided for in paragraph 1 within forty-eight hours of the seizure, if ordered by the same public prosecutor, or from the receipt of the report, if the seizure was carried out on the initiative of the judicial police.

3-ter. The seizure loses its effectiveness if the terms provided for in paragraph 3-bis are not observed or if the judge does not issue the validation order within ten days of receiving the request. A copy of the order is immediately notified to the person to whom the things were seized.

Article 322²⁵⁰ Review of the preventive seizure decree

1. Against the seizure decree issued by the judge, the accused and his lawyer, the person to whom the things were seized and the person who would have the right to their restitution may propose a request for re-examination, also on the merits, pursuant to article 324.

2. The request for review does not suspend the execution of the provision.

²⁵⁰ **Art. 322. Riesame del decreto di sequestro preventivo.**

1. Contro il decreto di sequestro emesso dal giudice l'imputato e il suo difensore, la persona alla quale le cose sono state sequestrate e quella che avrebbe diritto alla loro restituzione possono proporre richiesta di riesame, anche nel merito, a norma dell'articolo 324.

2. La richiesta di riesame non sospende l'esecuzione del provvedimento.

Article 322-bis²⁵¹ Appeal

1. Outside the cases provided for in Article 322, the public prosecutor, the accused and his defence counsel, the person to whom the things were seized and the person who would have the right to their restitution, may appeal against the ordinance concerning preventive seizure and against the decree revoking the seizure issued by the public prosecutor.

1-bis. The court of the provincial capital in which the office that issued the provision is based shall decide on the appeal in collegial composition.

2. The appeal does not suspend the execution of the provision. The provisions of article 310 apply insofar as they are compatible.

Article 323²⁵² Loss of effectiveness of the preventive seizure

1. With the sentence of acquittal or not to proceed, even if subject to appeal, the judge orders that the things seized be returned to whoever has the right, when the confiscation is not required in accordance with article 240 of the penal code. The provision is immediately enforceable.

2. When there are several identical copies of the thing seized and this is of interest for the purposes of evidence, the judge, even after the sentence of acquittal or non-prosecution challenged by the public prosecutor, orders that the seizure of only one copy be maintained and orders the return of the other specimens.

3. If a conviction is pronounced, the effects of the seizure remain when the confiscation of the seized things has been ordered.

²⁵¹ **Art. 322-bis. Appello.**

1. Fuori dei casi previsti dall'articolo 322, il pubblico ministero, l'imputato e il suo difensore, la persona alla quale le cose sono state sequestrate e quella che avrebbe diritto alla loro restituzione, possono proporre appello contro le ordinanze in materia di sequestro preventivo e contro il decreto di revoca del sequestro emesso dal pubblico ministero.

1-bis. Sull'appello decide, in composizione collegiale, il tribunale del capoluogo della provincia nella quale ha sede l'ufficio che ha emesso il provvedimento.

2. L'appello non sospende l'esecuzione del provvedimento. Si applicano, in quanto compatibili, le disposizioni dell'articolo 310.

²⁵² **Art. 323. Perdita di efficacia del sequestro preventivo.**

1. Con la sentenza di proscioglimento o di non luogo a procedere, ancorché soggetta a impugnazione, il giudice ordina che le cose sequestrate siano restituite a chi ne abbia diritto, quando non deve disporre la confisca a norma dell'articolo 240 del codice penale. Il provvedimento è immediatamente esecutivo.

2. Quando esistono più esemplari identici della cosa sequestrata e questa presenta interesse a fini di prova, il giudice, anche dopo la sentenza di proscioglimento o di non luogo a procedere impugnata dal pubblico ministero, ordina che sia mantenuto il sequestro di un solo esemplare e dispone la restituzione degli altri esemplari.

3. Se è pronunciata sentenza di condanna, gli effetti del sequestro permangono quando è stata disposta la confisca delle cose sequestrate.

4. La restituzione non è ordinata se il giudice dispone, a richiesta del pubblico ministero o della parte civile, che sulle cose appartenenti all'imputato o al responsabile civile sia mantenuto il sequestro a garanzia dei crediti indicati nell'articolo 316.

4. The restitution is not ordered if the judge decides, at the request of the public prosecutor or the civil party, that the property belonging to the accused or the civil party is retained for seizure as guarantee of the credits indicated in article 316.

- 29 As seen above Art. 321 para 1 c.p.p. allows the judge, at the request of the public prosecutor, to order the seizure of items connected to the offence if their free availability could aggravate or prolong the consequences of the crime or facilitate new crimes.
- 30 Art. 321 para 2 c.p.p. explicitly covers items subject to confiscation (instrumentalities or proceeds).
- 31 Art. 321(3-bis) and 3-ter c.p.p. provide for urgent provisional seizure by the public prosecutor or judicial police, with strict deadlines for validation by the judge.

Article 324²⁵³ Review procedure

1. The request for re-examination is presented, in the registry of the court indicated in paragraph 5, within ten days from the date of execution of the provision that ordered the seizure or from a different date on which the interested party became aware of the seizure.

2. The request is presented in the manner provided for in article 582. If the request is proposed by the accused who is not detained or interned, the latter, if he has not already declared or elected domicile or has not proceeded in accordance with article 161 paragraph 2, must indicate the domicile where it intends to receive the notice provided for by paragraph 6; failing that, the notice is notified by delivery to the defender. If the request is made by another person and this person has failed to declare his domicile, the notice is notified by filing with the registry.

²⁵³ **Art. 324. Procedimento di riesame.**

1. La richiesta di riesame è presentata, nella cancelleria del tribunale indicato nel comma 5, entro dieci giorni dalla data di esecuzione del provvedimento che ha disposto il sequestro o dalla diversa data in cui l'interessato ha avuto conoscenza dell'avvenuto sequestro.

2. La richiesta è presentata con le forme previste dall'articolo 582. Se la richiesta è proposta dall'imputato non detenuto né internato, questi, ove non abbia già dichiarato o eletto domicilio o non si sia proceduto a norma dell'articolo 161 comma 2, deve indicare il domicilio presso il quale intende ricevere l'avviso previsto dal comma 6; in mancanza, l'avviso è notificato mediante consegna al difensore. Se la richiesta è proposta da un'altra persona e questa abbia ommesso di dichiarare il proprio domicilio, l'avviso è notificato mediante deposito in cancelleria.

3. La cancelleria dà immediato avviso all'autorità giudiziaria procedente che, entro il giorno successivo, trasmette al tribunale gli atti su cui si fonda il provvedimento oggetto del riesame.

4. Con la richiesta di riesame possono essere enunciati anche i motivi. Chi ha proposto la richiesta ha, inoltre, facoltà di enunciare nuovi motivi davanti al giudice del riesame, facendone dare atto a verbale prima dell'inizio della discussione.

5. Sulla richiesta di riesame decide, in composizione collegiale, il tribunale del capoluogo della provincia nella quale ha sede l'ufficio che ha emesso il provvedimento nel termine di dieci giorni dalla ricezione degli atti.

6. Il procedimento davanti al tribunale si svolge in camera di consiglio nelle forme previste dall'articolo 127. Almeno tre giorni prima, l'avviso della data fissata per l'udienza è comunicato al pubblico ministero e notificato al difensore e a chi ha proposto la richiesta. Fino al giorno dell'udienza gli atti restano depositati in cancelleria.

7. Si applicano le disposizioni dell'articolo 309, commi 9, 9-bis e 10. La revoca del provvedimento di sequestro può essere parziale e non può essere disposta nei casi indicati nell'articolo 240 comma 2 del codice penale. (1) (2)

8. Il giudice del riesame, nel caso di contestazione della proprietà, rinvia la decisione della controversia al giudice civile, mantenendo nel frattempo il sequestro.

3. The registry immediately gives notice to the proceeding judicial authority which, within the following day, transmits to the court the documents on which the provision under review is based.
4. The reasons may also be stated with the request for review. The person making the request also has the right to state new reasons before the review judge, having them acknowledged in the minutes before the start of the discussion.
5. The court of the provincial capital in which the office that issued the provision is based shall decide, in collegial composition, on the request for re-examination within ten days of receipt of the documents.
6. The proceedings before the court take place in the private chamber in the forms provided for in Article 127. At least three days before, the notice of the date set for the hearing is communicated to the public prosecutor and notified to the defender and to the person who proposed the request. Until the day of the hearing, the documents remain deposited in the registry.
7. The provisions of article 309, paragraphs 9, 9-bis and 10 are applied. The revocation of the seizure order may be partial and cannot be ordered in the cases indicated in article 240 paragraph 2 of the criminal code.
8. The judge of the review, in the case of contestation of the property, refers the decision of the dispute to the civil judge, maintaining in the meantime the seizure.

Article 325²⁵⁴ Appeal to cassation

1. Against the orders issued pursuant to articles 322-bis and 324, the public prosecutor, the accused and his counsel, the person to whom the things were seized and the person who would have the right to their restitution may appeal in cassation for violation of the law.
2. Within the term provided for in article 324 paragraph 1, an appeal may be filed directly in cassation against the seizure decree issued by the judge. The filing of the appeal renders the request for re-examination inadmissible.
3. The provisions of article 311 paragraphs 3, 4 and 5 (1) apply.
4. The appeal does not suspend the execution of the order.

²⁵⁴ **Art. 325. Ricorso per cassazione.**

1. Contro le ordinanze emesse a norma degli articoli 322-bis e 324, il pubblico ministero, l'imputato e il suo difensore, la persona alla quale le cose sono state sequestrate e quella che avrebbe diritto alla loro restituzione possono proporre ricorso per cassazione per violazione di legge.
2. Entro il termine previsto dell'articolo 324 comma 1, contro il decreto di sequestro emesso dal giudice può essere proposto direttamente ricorso per cassazione. La proposizione del ricorso rende inammissibile la richiesta di riesame.
3. Si applicano le disposizioni dell'articolo 311 commi 3, 4 e 5 (1).
4. Il ricorso non sospende l'esecuzione della ordinanza.

Article 737²⁵⁵ Seizure [in relation to EU countries]

1. At the request of the Attorney General, the court of appeal competent for the recognition of a foreign sentence for the execution of a confiscation may order the seizure of things subject to confiscation.
2. If the court does not accept the request, an appeal in cassation may be lodged against the relative order by the Attorney General. An appeal to cassation for violation of the law by the interested party can be lodged against the order that orders the seizure. The appeal has no suspensive effect.
3. The provisions governing the execution of the preventive seizure are observed as applicable.

Article 737-bis²⁵⁶ Investigations and seizure for confiscation purposes

1. In cases provided for by international conventions, in order to process the foreign authority's request to investigate assets that may become the subject of a subsequent request for execution of a confiscation, even if not yet adopted, or to proceed with the seizure of such assets, Articles 723, 724 and 725 apply.
2. To this end, the Minister of Justice transmits the request, together with the attached documents, to the competent district attorney pursuant to article 724.
3. The execution of the request for investigation or seizure is denied:

²⁵⁵ **Art. 737. Sequestro.**

1. Su richiesta del procuratore generale, la corte di appello competente per il riconoscimento di una sentenza straniera ai fini dell'esecuzione di una confisca può ordinare il sequestro delle cose assoggettabili a confisca.
2. Se la corte non accoglie la richiesta, contro la relativa ordinanza può essere proposto ricorso per cassazione da parte del procuratore generale. Contro l'ordinanza che dispone il sequestro può essere proposto ricorso per cassazione per violazione di legge da parte dell'interessato. Il ricorso non ha effetto sospensivo.
3. Si osservano, in quanto applicabili, le disposizioni che regolano l'esecuzione del sequestro preventivo.

²⁵⁶ **Art. 737-bis.**

Indagini e sequestro a fini di confisca. (1)

1. Nei casi previsti da convenzioni internazionali, al fine di dar corso alla domanda dell'autorità straniera di procedere ad indagini su beni che possono divenire oggetto di una successiva richiesta di esecuzione di una confisca, anche se non ancora adottata, ovvero di procedere al sequestro di tali beni, si applicano gli articoli 723, 724 e 725 (2).

2. A tal fine il Ministro della giustizia trasmette la richiesta, unitamente agli atti allegati, al procuratore distrettuale competente ai sensi dell'articolo 724 (3).

3. L'esecuzione della richiesta di indagini o sequestro è negata:

- a) se gli atti richiesti sono contrari a principi dell'ordinamento giuridico dello Stato, o sono vietati dalla legge, ovvero se si tratta di atti che non sarebbero consentiti qualora si procedesse nello Stato per gli stessi fatti;
- b) se vi sono ragioni per ritenere che non sussistono le condizioni per la successiva esecuzione della confisca.

3-bis. L'autorità giudiziaria comunica al Ministro della giustizia l'adozione del provvedimento di sequestro richiesto dall'autorità straniera (4).

[4. Per l'esecuzione di indagini si osservano le disposizioni dell'articolo 725.]

[5. Nei casi di richiesta di sequestro, si applicano le disposizioni dell'articolo 737, commi 2 e 3.

6. Il sequestro ordinato ai sensi di questo articolo perde efficacia e si dispone la restituzione delle cose sequestrate a chi ne abbia diritto, se, entro un anno dal momento in cui esso è stato eseguito, lo Stato estero non richiede l'esecuzione della confisca. Il termine può essere prorogato anche più volte per un periodo massimo di sei mesi; sulla richiesta decide l'autorità giudiziaria che ha dichiarato il sequestro.

a) if the requested acts are contrary to the principles of the legal system of the State, or are prohibited by law, or if they are acts that would not be permitted if the State proceeded for the same facts;

b) if there are reasons to believe that the conditions for the subsequent execution of the confiscation do not exist.

3-bis. The judicial authority communicates to the Minister of Justice the adoption of the seizure order requested by the foreign authority.

[4. For the conduct of investigations, the provisions of Article 725 are observed.] abolished

[5. In the case of a request for seizure, the provisions of article 737, paragraphs 2 and 3 apply.] abolished

6. The seizure ordered pursuant to this article loses its effectiveness and the restitution of the seized things is ordered to whoever is entitled to it, if, within one year from the moment in which it was carried out, the foreign State does not request the execution of the confiscation. The term can be extended several times for a maximum period of six months; the judicial authority that declared the seizure decides on the request.

Criminal Code

32

Article 466bis²⁵⁷ Confiscation

In the event of conviction or application of punishment at the request of the parties, pursuant to Article 444 of the Code of Criminal Procedure, for one of the offences referred to in Articles 453, 454, 455, 460 and 461, the confiscation of the things that served or were destined to commit the crime and of the things that are the product, price or profit of the offence shall always be ordered, unless they belong to a person not involved in the crime, or when this is not possible, of the goods that the convicted person has in any case at his disposal, for a value corresponding to the profit, product or price of the offence. The third paragraph of Article 322-ter applies.

²⁵⁷ **Art. 466-bis. Confisca CP.**

Nel caso di condanna o di applicazione di pena su richiesta delle parti, a norma dell'articolo 444 del codice di procedura penale, per uno dei delitti di cui agli articoli 453, 454, 455, 460 e 461 è sempre ordinata la confisca delle cose che servirono o furono destinate a commettere il reato e delle cose che ne sono il prodotto, il prezzo o il profitto, salvo che appartengano a persona estranea al reato, ovvero quando essa non è possibile dei beni di cui il condannato ha comunque la disponibilità, per un valore corrispondente al profitto, al prodotto o al prezzo del reato. Si applica il terzo comma dell'articolo 322-ter.

Law of 22 April 2005 (EAW Act)

Article 34 Request in case of seizure or confiscation of assets²⁵⁸

1. With the European arrest warrant issued pursuant to Article 28, the Attorney General at the Court of Appeal requests the judicial authority of the executing Member State to surrender the assets subject to the seizure or confiscation order that may be issued by the judge competent, transmitting, at the same time, a copy of the seizure orders.

Article 35 Seizure and delivery of goods²⁵⁹

1. At the request of the judicial authority that issued the European arrest warrant, or ex officio, the court of appeal may order the seizure of the assets necessary for the purposes of the proof or susceptible of confiscation as they constitute the product, the profit of the price of the crime in the availability of the requested person and within the limits referred to in the following paragraphs.

2. The request referred to in paragraph 1 contains the specification if the surrender requires the sole purpose of proof or for the purposes of confiscation. If this clarification is not contained in the request, the president of the court of appeal invites the requesting judicial authority to transmit it.

3. The appeals court shall act with a reasoned decree, having heard the attorney general. The provisions referred to in articles 253, 254, 255, 256, 258, 259 and 260, paragraphs 1 and 2, of the criminal procedure code apply, insofar as they are compatible.

²⁵⁸ **Art. 34. Richiesta in caso di sequestro o di confisca di beni.**

1. Con il mandato d'arresto europeo emesso ai sensi dell'articolo 28 il procuratore generale presso la corte di appello richiede all'autorità giudiziaria dello Stato membro di esecuzione la consegna dei beni oggetto del provvedimento di sequestro o di confisca eventualmente emesso dal giudice competente, trasmettendo, nel contempo, copia dei provvedimenti di sequestro.

²⁵⁹ **Art. 35. Sequestro e consegna di beni.**

1. Su richiesta dell'autorità giudiziaria che ha emesso il mandato d'arresto europeo, o d'ufficio, la corte di appello può disporre il sequestro dei beni necessari ai fini della prova ovvero suscettibili di confisca in quanto costituenti il prodotto, il profitto o il prezzo del reato nella disponibilità del ricercato e nei limiti di cui ai commi seguenti.

2. La richiesta di cui al comma 1 contiene la precisazione se la consegna necessita ai soli fini della prova ovvero ai fini della confisca. Ove tale precisazione non risulti contenuta nella richiesta, il presidente della corte di appello invita l'autorità giudiziaria richiedente a trasmetterla.

3. La corte di appello provvede con decreto motivato, sentito il procuratore generale. Si applicano, in quanto compatibili, le disposizioni di cui agli articoli 253, 254, 255, 256, 258, 259 e 260, commi 1 e 2, del codice di procedura penale.

4. La consegna delle cose sequestrate all'autorità giudiziaria richiedente ha luogo secondo le modalità e le intese con la stessa intervenute tramite il Ministro della giustizia.

5. Quando la consegna è richiesta ai fini della prova, la corte di appello dispone che la consegna resta subordinata alla condizione che i beni siano restituiti una volta soddisfatte le esigenze processuali.

6. Quando la consegna è richiesta ai fini della confisca, la corte di appello dispone il sequestro salvaguardando i diritti previsti dal comma 9 e le esigenze dell'autorità giudiziaria italiana di cui all'articolo 36. In ogni caso, concedendo il sequestro, la corte dispone che la consegna resti subordinata alla condizione che successivamente non risultino diritti acquisiti ai sensi del comma 9.

7. I beni sequestrati sono consegnati anche nel caso in cui il mandato d'arresto europeo non può essere eseguito a motivo del decesso o della fuga del ricercato.

8. Si applicano le disposizioni dell'articolo 719 del codice di procedura penale.

9. Sono sempre fatti salvi gli eventuali diritti acquisiti sui beni di cui al comma 1 dallo Stato italiano o da terzi.

4. The consignment of the things seized to the requesting judicial authority takes place according to the modalities and agreements with the same through the Minister of Justice.
5. When delivery is requested for the purposes of proof, the court of appeal establishes that delivery remains subject to the condition that the goods are returned once the procedural requirements have been met.
6. When the surrender is requested for the purposes of confiscation, the appellate court orders the seizure safeguarding the rights provided for in paragraph 9 and the needs of the Italian judicial authority referred to in article 36. In any case, by granting the seizure, the court provides that the delivery remains subject to the condition that subsequently there are no acquired rights pursuant to paragraph 9.
7. The seized assets are handed over even if the European arrest warrant cannot be executed due to the death or flight of the requested person.
8. The provisions of article 719 of the criminal procedure code apply.
9. Any rights acquired on the assets referred to in paragraph 1 by the Italian State or by third parties are always reserved.

Article 36 Competition for seizures²⁶⁰

1. In the event that the assets requested for seizure by the judicial authority of the Member State are already subject to seizure ordered by the Italian judicial authority in the context of an ongoing criminal proceeding and their confiscation is provided for by Italian law, the delivery may be ordered solely for the purposes of evidence and subject to the authorisation of the proceeding Italian judicial authority with the limit referred to in Article 35, paragraph 9.
2. Delivery is subject to the same conditions referred to in paragraph 1 in the case of assets already subject to seizure ordered in the context of a civil proceeding pursuant to articles 670 and 671 of the code of civil procedure.

²⁶⁰ **Art. 36. Concorso di sequestri.**

1. Nel caso in cui i beni richiesti di sequestro dall'autorità giudiziaria dello Stato membro costituiscano già oggetto di sequestro disposto dall'autorità giudiziaria italiana nell'ambito di un procedimento penale in corso e di essi sia prevista dalla legge italiana la confisca, la consegna può essere disposta ai soli fini delle esigenze probatorie e previo nulla osta dell'autorità giudiziaria italiana procedente con il limite di cui all'articolo 35, comma 9.

2. Alle stesse condizioni di cui al comma 1 è subordinata la consegna quando si tratta di beni già oggetto di sequestro disposto nell'ambito di un procedimento civile a norma degli articoli 670 e 671 del codice di procedura civile.

Codice Civile

Article 2635²⁶¹

Unless the fact constitutes a more serious offense, the directors, general managers, managers responsible for preparing corporate accounting documents, statutory auditors and liquidators, who, following the donation or promise of money or other benefits, for themselves or for others, perform or omit acts, in violation of the obligations inherent to their office or the obligations of loyalty, causing harm to the company, are punished with imprisonment from one to three years.

The term of imprisonment of up to one year and six months is applied if the offense is committed by whoever is subject to the management or supervision of one of the subjects indicated in the first paragraph.

Anyone who gives or promises money or other benefits to the persons indicated in the first and second paragraphs is punished with the penalties provided for therein.

The penalties established in the preceding paragraphs are doubled in the case of companies with securities listed on regulated markets in Italy or in other states of the European Union or disseminated to the public to a significant extent pursuant to Article 116 of the Consolidated Law on financial intermediation, as per Legislative Decree no. 58, and subsequent amendments.

A complaint is made by the injured party, unless the fact results in a distortion of competition in the acquisition of goods or services.

ee. Para 1(e) Interception of electronic communications to and from the suspect or accused person

(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;

²⁶¹ **Art. 2635. Corruzione tra privati.**

Salvo che il fatto costituisca più grave reato, gli amministratori, i direttori generali, i dirigenti preposti alla redazione dei documenti contabili societari, i sindaci e i liquidatori, di società o enti privati che, anche per interposta persona, sollecitano o ricevono, per se' o per altri, denaro o altra utilità non dovuti, o ne accettano la promessa, per compiere o per omettere un atto in violazione degli obblighi inerenti al loro ufficio o degli obblighi di fedeltà, sono puniti con la reclusione da uno a tre anni. Si applica la stessa pena se il fatto e' commesso da chi nell'ambito organizzativo della società o dell'ente privato esercita funzioni direttive diverse da quelle proprie dei soggetti di cui al precedente periodo. (1)

Si applica la pena della reclusione fino a un anno e sei mesi se il fatto è commesso da chi è sottoposto alla direzione o alla vigilanza di uno dei soggetti indicati al primo comma.

Chi, anche per interposta persona, offre, promette o dà denaro o altra utilità non dovuti alle persone indicate nel primo e nel secondo comma, è punito con le pene ivi previste (2).

Le pene stabilite nei commi precedenti sono raddoppiate se si tratta di società con titoli quotati in mercati regolamentati italiani o di altri Stati dell'Unione europea o diffusi tra il pubblico in misura rilevante ai sensi dell'articolo 116 del testo unico delle disposizioni in materia di intermediazione finanziaria, di cui al decreto legislativo 24 febbraio 1998, n. 58, e successive modificazioni.

[Si procede a querela della persona offesa, salvo che dal fatto derivi una distorsione della concorrenza nella acquisizione di beni o servizi].

Chapter IV Wiretapping of conversations or communications**Article 266 Limits of admissibility²⁶²**

1. The interception of telephone conversations or communications and other forms of telecommunication is permitted in proceedings relating to the following crimes:

- a) non-culpable crimes for which the penalty of life imprisonment or imprisonment exceeding a maximum of five years determined in accordance with Article 4;
- b) crimes against the public administration for which the penalty of imprisonment of not less than a maximum of five years determined in accordance with article 4 is envisaged;
- c) crimes concerning narcotic or psychotropic substances;
- d) crimes concerning weapons and explosive substances;
- e) smuggling offenses;
- f) crimes of insult, threat, usury, abusive financial activity, abuse of privileged information, market manipulation, harassment or disturbance to people by telephone;
- f-bis) crimes provided for by article 600-ter, third paragraph, of the criminal code, even if relating to pornographic material referred to in article 600-quater.1 of the same code, as well as by Art. 609-undecies;
- f-ter) crimes provided for in articles 444, 473, 474, 515, 516, 517-quater and 633, second paragraph, of the criminal code;
- f-quater) crime envisaged by article 612-bis of the criminal code;

²⁶² **Art. 266.Limiti di ammissibilità.**

1. L'intercettazione di conversazioni o comunicazioni telefoniche e di altre forme di telecomunicazione è consentita nei procedimenti relativi ai seguenti reati:

- a) delitti non colposi per i quali è prevista la pena dell'ergastolo o della reclusione superiore nel massimo a cinque anni determinata a norma dell'articolo 4;
- b) delitti contro la pubblica amministrazione per i quali è prevista la pena della reclusione non inferiore nel massimo a cinque anni determinata a norma dell'articolo 4;
- c) delitti concernenti sostanze stupefacenti o psicotrope;
- d) delitti concernenti le armi e le sostanze esplosive;
- e) delitti di contrabbando;
- f) reati di ingiuria, minaccia, usura, abusiva attività finanziaria, abuso di informazioni privilegiate, manipolazione del mercato, molestia o disturbo alle persone col mezzo del telefono;
- f-bis) delitti previsti dall'articolo 600-ter, terzo comma, del codice penale, anche se relativi al materiale pornografico di cui all'articolo 600-quater.1 del medesimo codice, nonché dall'Art. 609-undecies;
- f-ter) delitti previsti dagli articoli 444, 473, 474, 515, 516, 517-quater e 633, secondo comma, del codice penale;
- f-quater) delitto previsto dall'articolo 612-bis del codice penale;
- f-quinquies) delitti commessi avvalendosi delle condizioni previste dall'articolo 416-bis del codice penale ovvero al fine di agevolare l'attività delle associazioni previste dallo stesso articolo.

2. Negli stessi casi è consentita l'intercettazione di comunicazioni tra presenti, che può essere eseguita anche mediante l'inserimento di un captatore informatico su un dispositivo elettronico portatile. Tuttavia, qualora queste avvengano nei luoghi indicati dall'articolo 614 del codice penale, l'intercettazione è consentita solo se vi è fondato motivo di ritenere che ivi si stia svolgendo l'attività criminosa.

2-bis. L'intercettazione di comunicazioni tra presenti mediante inserimento di captatore informatico su dispositivo elettronico portatile è sempre consentita nei procedimenti per i delitti di cui all'articolo 51, commi 3-bis e 3-quater, e, previa indicazione delle ragioni che ne giustificano l'utilizzo anche nei luoghi indicati dall'articolo 614 del codice penale, per i delitti dei pubblici ufficiali o degli incaricati di pubblico servizio contro la pubblica amministrazione per i quali è prevista la pena della reclusione non inferiore nel massimo a cinque anni, determinata a norma dell'articolo 4.

f-quinquies) crimes committed making use of the conditions provided for by article 416-bis of the criminal code or in order to facilitate the activities of the associations envisaged by the same article.

2. In the same cases, the interception of communications between present is allowed, which can also be performed by inserting a computer sensor on a portable electronic device. However, if these take place in the places indicated in article 614 of the criminal code, interception is allowed only if there is well-founded reason to believe that the criminal activity is taking place there.

2-bis. The interception of communications between those present by inserting a computer detector on a portable electronic device is always permitted in the proceedings for the crimes referred to in Article 51, paragraphs 3-bis and 3-quater, and, after indicating the reasons justifying the use also in the places indicated in article 614 of the criminal code, for the crimes of public officials or persons in charge of public service against the public administration for which the penalty of imprisonment of not less than five years, determined in accordance with of article 4.

Article 266-bis

Interception of computer or telematic communications²⁶³

1. In the proceedings relating to the offenses indicated in article 266, as well as to those committed through the use of IT or telematic technologies, the interception of the flow of communications relating to IT or telematic systems or between several systems is permitted.

²⁶³ **Art. 266-bis. Intercettazioni di comunicazioni informatiche o telematiche.**

1. Nei procedimenti relativi ai reati indicati nell'articolo 266, nonché a quelli commessi mediante l'impiego di tecnologie informatiche o telematiche, è consentita l'intercettazione del flusso di comunicazioni relativo a sistemi informatici o telematici ovvero intercorrente tra più sistemi.

Article 267 Pre-Conditions and forms of the measure²⁶⁴

1. The public prosecutor shall request from the judge for preliminary investigations authorisation to carry out the operations provided for in Article 266. Authorisation is given by a reasoned decree when there are serious indications of a crime and the interception is absolutely essential for the prosecution of the investigation. The decree that authorises the interception between those present by inserting a computer sensor on a portable electronic device indicates the reasons that make this procedure necessary for carrying out the investigations; as well as, if one proceeds for crimes other than those referred to in Article 51, paragraphs 3-bis and 3-quater,

1-bis. In the assessment of serious evidence of crime, Article 203 applies.

2. In urgent cases, where there are reasonable grounds to believe that delay may seriously prejudice the investigation, the public prosecutor may order interception by a reasoned decree, which must be communicated immediately, and in any event within twenty-four hours, to the judge referred to in paragraph 1. Within forty-eight hours of

²⁶⁴ **Art. 267. Presupposti e forme del provvedimento.**

1. Il pubblico ministero richiede al giudice per le indagini preliminari l'autorizzazione a disporre le operazioni previste dall'Art. 266. L'autorizzazione è data con decreto motivato quando vi sono gravi indizi di reato e l'intercettazione è assolutamente indispensabile ai fini della prosecuzione delle indagini. Il decreto che autorizza l'intercettazione tra presenti mediante inserimento di captatore informatico su dispositivo elettronico portatile indica le ragioni che rendono necessaria tale modalità per lo svolgimento delle indagini; nonché, se si procede per delitti diversi da quelli di cui all'articolo 51, commi 3-bis e 3-quater, e dai delitti dei pubblici ufficiali o degli incaricati di pubblico servizio contro la pubblica amministrazione per i quali è prevista la pena della reclusione non inferiore nel massimo a cinque anni, determinata a norma dell'articolo 4, i luoghi e il tempo, anche indirettamente determinati, in relazione ai quali è consentita l'attivazione del microfono.

1-bis. Nella valutazione dei gravi indizi di reato si applica l'articolo 203.

2. Nei casi di urgenza, quando vi è fondato motivo di ritenere che dal ritardo possa derivare grave pregiudizio alle indagini, il pubblico ministero dispone l'intercettazione con decreto motivato, che va comunicato immediatamente e comunque non oltre le ventiquattro ore al giudice indicato nel comma 1. Il giudice, entro quarantotto ore dal provvedimento, decide sulla convalida con decreto motivato. Se il decreto del pubblico ministero non viene convalidato nel termine stabilito, l'intercettazione non può essere proseguita e i risultati di essa non possono essere utilizzati.

2-bis. Nei casi di cui al comma 2, il pubblico ministero può disporre, con decreto motivato, l'intercettazione tra presenti mediante inserimento di captatore informatico su dispositivo elettronico portatile soltanto nei procedimenti per i delitti di cui all'articolo 51, commi 3-bis e 3-quater e per i delitti dei pubblici ufficiali o degli incaricati di pubblico servizio contro la pubblica amministrazione per i quali è prevista la pena della reclusione non inferiore nel massimo a cinque anni, determinata a norma dell'articolo 4. A tal fine indica, oltre a quanto previsto dal comma 1, secondo periodo, le ragioni di urgenza che rendono impossibile attendere il provvedimento del giudice. Il decreto è trasmesso al giudice che decide sulla convalida nei termini, con le modalità e gli effetti indicati al comma 2.

3. Il decreto del pubblico ministero che dispone l'intercettazione indica le modalità e la durata delle operazioni. Tale durata non può superare i quindici giorni, ma può essere prorogata dal giudice con decreto motivato per periodi successivi di quindici giorni, qualora permangano i presupposti indicati nel comma 1.

4. Il pubblico ministero procede alle operazioni personalmente ovvero avvalendosi di un ufficiale di polizia giudiziaria.

5. In apposito registro riservato gestito, anche con modalità informatiche, e tenuto sotto la direzione e la sorveglianza del Procuratore della Repubblica, sono annotati, secondo un ordine cronologico, i decreti che dispongono, autorizzano, convalidano o prorogano le intercettazioni e, per ciascuna intercettazione, l'inizio e il termine delle operazioni.

the measure, the judge shall decide on its validation by a reasoned decree. If the prosecutor's decree is not validated within the prescribed period, the interception shall not be continued and its results may not be used.

2-bis. In the cases referred to in paragraph 2, the public prosecutor may order, with a reasoned decree, the interception between those present by inserting a computer sensor on a portable electronic device only in the proceedings for the crimes referred to in Article 51, paragraphs 3-bis and 3-quater and for the crimes of public officials or persons in charge of public service against the public administration for which the penalty of imprisonment of not less than five years, determined in accordance with article 4, is envisaged. In addition to the provisions of paragraph 1, second sentence, the reasons of urgency that make it impossible to await the decision of the judge. The decree is sent to the judge who decides on validation within the terms, with the methods and effects indicated in paragraph 2.

3. The decree of the public prosecutor ordering the interception shall specify the methods and duration of the operations. The duration may not exceed fifteen days, but it may be extended by the judge by a reasoned decree for successive periods of fifteen days, provided that the conditions set out in paragraph 1 continue to exist.

4. The public prosecutor carries out the operations personally or using a judicial police officer.

5. In a dedicated, confidential register, which may also be maintained electronically and is kept under the direction and supervision of the Public Prosecutor, the decrees that order, authorise, validate, or extend the interceptions shall be recorded in chronological order, together with, for each interception, the start and end of the operations.

- 35 Note to EDP:** Check material eligibility: offence must fall under Art. 266(1) c.p.p., i.e.,
- crimes punishable by life imprisonment or > 5 years,
 - corruption/public administration crimes with max \geq 5 years,
 - narcotics, weapons/explosives, smuggling (relevant for VAT/customs PIF),
 - market abuse/insider dealing, financial abuse, harassment by phone,
 - 416-bis mafia-type crimes or to facilitate them,
 - IT crimes committed through telematic systems (Art. 266-bis).

Check necessity and evidentiary threshold:

- serious indications of crime (gravi indizi di reato, Art. 267(1) c.p.p.),
- interception absolutely essential for the investigation.

Check form and authority:

- normally: prior judicial authorisation by investigating judge (GIP) with reasoned decree,

– urgent cases: EDP may order provisionally with reasoned decree → notify judge ≤ 24 h
→ validation ≤ 48 h (Art. 267(2) c.p.p.).

Check proportionality and duration:

– initial max 15 days → renewable in 15-day blocks with motivated decree,
– operations conducted by prosecutor or judicial police under his/her direction.

Thus as an EDP, one may order or request interception of electronic communications for PIF-offences only if the offence falls within Art. 266 c.p.p., there are serious indications of crime and the measure is absolutely essential, with prior or urgent judicial authorisation, strict 15-day limits, and compliance with proportionality.

Article 268 Execution of operations

1.²⁶⁵ The intercepted communications are recorded and the operations are recorded in the minutes.

36

²⁶⁵ Art. 268. Esecuzione delle operazioni.

1. Le comunicazioni intercettate sono registrate e delle operazioni è redatto verbale.

2. Nel verbale è trascritto, anche sommariamente, il contenuto delle comunicazioni intercettate.

2-bis. Il pubblico ministero dà indicazioni e vigila affinché nei verbali non siano riportate espressioni lesive della reputazione delle persone o quelle che riguardano dati personali definiti sensibili dalla legge, salvo che risultino rilevanti ai fini delle indagini.

[2-ter. Il pubblico ministero, con decreto motivato, può disporre che le comunicazioni e conversazioni di cui al comma 2-bis siano trascritte nel verbale quando ne ritiene la rilevanza per i fatti oggetto di prova. Può altresì disporre la trascrizione nel verbale, se necessarie a fini di prova, delle comunicazioni e conversazioni relative a dati personali definiti sensibili dalla legge]

3. Le operazioni possono essere compiute esclusivamente per mezzo degli impianti installati nella procura della Repubblica. Tuttavia, quando tali impianti risultano insufficienti o inadeguati ed esistono eccezionali ragioni di urgenza, il pubblico ministero può disporre, con provvedimento motivato, il compimento delle operazioni mediante impianti di pubblico servizio o in dotazione alla polizia giudiziaria.

3-bis. Quando si procede a intercettazione di comunicazioni informatiche o telematiche, il pubblico ministero può disporre che le operazioni siano compiute anche mediante impianti appartenenti a privati. Per le operazioni di avvio e di cessazione delle registrazioni con captatore informatico su dispositivo elettronico portatile, riguardanti comunicazioni e conversazioni tra presenti, l'ufficiale di polizia giudiziaria può avvalersi di persone idonee di cui all'articolo 348, comma 4.

4. I verbali e le registrazioni sono immediatamente trasmessi al pubblico ministero per la conservazione nell'archivio di cui all'articolo 269, comma 1. Entro cinque giorni dalla conclusione delle operazioni, essi sono depositati presso l'archivio di cui all'articolo 269, comma 1, insieme ai decreti che hanno disposto, autorizzato, convalidato o prorogato l'intercettazione, rimanendovi per il tempo fissato dal pubblico ministero, salvo che il giudice non riconosca necessaria una proroga.

5. Se dal deposito può derivare un grave pregiudizio per le indagini, il giudice autorizza il pubblico ministero a ritardarlo non oltre la chiusura delle indagini preliminari.

6. Ai difensori delle parti è immediatamente dato avviso che, entro il termine fissato a norma dei commi 4 e 5, per via telematica hanno facoltà di esaminare gli atti e ascoltare le registrazioni ovvero di prendere cognizione dei flussi di comunicazioni informatiche o telematiche. Scaduto il termine, il giudice dispone l'acquisizione delle conversazioni o dei flussi di comunicazioni informatiche o telematiche indicati dalle parti, che non appaiano irrilevanti, procedendo anche di ufficio allo stralcio delle registrazioni e dei verbali di cui è vietata l'utilizzazione e di quelli che riguardano categorie particolari di dati personali, sempre che non ne sia dimostrata la rilevanza. Il

2. The content of the intercepted communications is transcribed, even if summarily, in the report.

2-bis. The public prosecutor gives indications and ensures that in the report there are no expressions harmful to the reputation of persons or those concerning personal data defined as sensitive by the law, unless they are relevant for the purposes of the investigations.

[2-ter. The public prosecutor, with a reasoned decree, may order that the communications and conversations referred to in paragraph 2-bis be transcribed in the minutes when it considers their relevance for the facts being tested. It may also order the transcription in the minutes, if necessary for proof purposes, of communications and conversations relating to personal data defined as sensitive by the law]

3. The operations can be carried out exclusively by means of the systems installed in the public prosecutor's office. However, when these systems are insufficient or unsuitable and exceptional reasons of urgency exist, the public prosecutor may order, with a justified order, the completion of the operations through public service systems or provided to the judicial police.

3-bis. When the interception of computer or telematic communications is carried out, the public prosecutor may order that the operations be carried out also through systems belonging to private individuals. For the operations to start and stop registrations with a computer detector on a portable electronic device, regarding communications and conversations between those present, the judicial police officer may make use of suitable persons referred to in Article 348, paragraph 4.

4. The minutes and records are immediately sent to the public prosecutor for storage in the archive referred to in article 269, paragraph 1. Within five days from the conclusion of the operations, they are deposited in the archive referred to in article 269., paragraph 1, together with the decrees that ordered, authorised, validated or extended the interception, remaining there for the time set by the public prosecutor, unless the judge recognizes that an extension is necessary.

5. If the filing can cause serious damage to the investigation, the judge authorises the public prosecutor to delay it no later than the closing of the preliminary investigation.

pubblico ministero e i difensori hanno diritto di partecipare allo stralcio e sono avvisati almeno ventiquattro ore prima.

7. Il giudice, anche nel corso delle attività di formazione del fascicolo per il dibattimento ai sensi dell'articolo 431, dispone la trascrizione integrale delle registrazioni ovvero la stampa in forma intellegibile delle informazioni contenute nei flussi di comunicazioni informatiche o telematiche da acquisire, osservando le forme, i modi e le garanzie previsti per l'espletamento delle perizie. Le trascrizioni o le stampe sono inserite nel fascicolo per il dibattimento. Il giudice, con il consenso delle parti, può disporre l'utilizzazione delle trascrizioni delle registrazioni ovvero delle informazioni contenute nei flussi di comunicazioni informatiche o telematiche effettuate dalla polizia giudiziaria nel corso delle indagini. In caso di contestazioni si applicano le disposizioni di cui al primo periodo.

8. I difensori possono estrarre copia delle trascrizioni e fare eseguire la trasposizione della registrazione su idoneo supporto. In caso di intercettazione di flussi di comunicazioni informatiche o telematiche i difensori possono richiedere copia su idoneo supporto dei flussi intercettati, ovvero copia della stampa prevista dal comma 7.

6. The defendants of the parties are immediately notified that, within the deadline set in accordance with paragraphs 4 and 5, they have the right to electronically examine the documents and listen to the recordings or to become aware of the flows of computer or telematic communications. Once the deadline has expired, the judge orders the acquisition of the conversations or flows of computer or telematic communications indicated by the parties, which do not appear irrelevant, also proceeding ex officio to the removal of the registrations and minutes whose use is prohibited and those which concern particular categories of personal data, provided that their relevance is not demonstrated. The prosecutor and the defenders have the right to participate in the removal and are notified at least twenty-four hours in advance.

7. The judge, even in the course of the preparation of the dossier for the hearing pursuant to article 431, orders the complete transcription of the recordings or the printing in an intelligible form of the information contained in the computer or telematic communications flows to be acquired, observing the forms, methods and guarantees envisaged for carrying out the appraisals. The transcripts or prints are included in the file for the hearing. The judge, with the consent of the parties, may order the use of the transcripts of the recordings or the information contained in the flows of computer or telematic communications carried out by the judicial police during the investigation. In the event of disputes, the provisions referred to in the first sentence apply.

8. The defendants can extract a copy of the transcripts and have the recording carried out on a suitable medium. In the event of interception of IT or telematic communications flows, the defendants may request a copy of the intercepted flows on a suitable support, or a copy of the print provided for in paragraph 7.

Article 270 Use in other proceedings²⁶⁶

1. The results of the wiretapping cannot be used in proceedings other than those in which they were ordered, unless they are relevant and indispensable for the ascertainment of crimes for which arrest in flagrante delicto is mandatory and of the offenses referred to in article 266, paragraph 1.

1-bis. Without prejudice to the provisions of paragraph 1, the results of the interceptions between those present operated with a computer detector on a portable electronic device can also be used for the proof of crimes other than those for which the authorisation decree has been issued if they are indispensable for the ascertainment of the crimes indicated in article 266, paragraph 2-bis.

2. For the purposes of the use provided for in paragraph 1, the reports and records of the interceptions are deposited with the competent authority for the different procedure. The provisions of article 268, paragraphs 6, 7 and 8 are applied.

3. The public prosecutor and the defence counsel of the parties are also entitled to examine the minutes and records previously filed in the proceedings in which the wiretapping was authorised.

²⁶⁶ **Articolo 270. Utilizzazione in altri procedimenti.**

1. I risultati delle intercettazioni non possono essere utilizzati in procedimenti diversi da quelli nei quali sono stati disposti, salvo che risultino rilevanti e indispensabili per l'accertamento di delitti per i quali è obbligatorio l'arresto in flagranza e dei reati di cui all'articolo 266, comma 1.

1-bis. Fermo restando quanto previsto dal comma 1, i risultati delle intercettazioni tra presenti operate con captatore informatico su dispositivo elettronico portatile possono essere utilizzati anche per la prova di reati diversi da quelli per i quali è stato emesso il decreto di autorizzazione qualora risultino indispensabili per l'accertamento dei delitti indicati dall'articolo 266, comma 2-bis.

2. Ai fini della utilizzazione prevista dal comma 1, i verbali e le registrazioni delle intercettazioni sono depositati presso l'autorità competente per il diverso procedimento. Si applicano le disposizioni dell'articolo 268, commi 6, 7 e 8.

3. Il pubblico ministero e i difensori delle parti hanno altresì facoltà di esaminare i verbali e le registrazioni in precedenza depositati nel procedimento in cui le intercettazioni furono autorizzate.

Legislative Decree of 02.2.2021 nr. 9²⁶⁷**Article 17²⁶⁸ Declarations relating to the investigative measures referred to in Article 30 of the Regulation**

1. For the purposes referred to in Article 30, paragraphs 1 and 3, of the Regulation, the European Delegated Prosecutors are authorised to order or request the interception of conversations and controlled deliveries of goods within the limits and under the conditions established by the regulations in force.
2. In the fifteen days following the date of entry into force of this decree, the Government, on the proposal of the Minister of Justice, shall notify the European Public Prosecutor's Office of the list of offenses for which laws in force allow the use, for criminal investigation purposes, of the interception of conversations or communications and of controlled deliveries of goods.

c) Para 1(f) Track & Trace an Object

(f) track and trace an object by technical means, including controlled deliveries of goods.

Book Three Means of Evidence**Chapter I Inspections****Article 244 CPC²⁶⁹ Cases and forms of inspections**

1. The inspection of people, places and things is ordered by a reasoned decree when it is necessary to ascertain the traces and other material effects of the crime.
2. If the offense has not left traces or material effects, or if these have disappeared or have been cancelled or dispersed, altered or removed, the judicial authority describes the current state and, as far as possible, verifies the pre-existing one, also taking care of identify the manner, time and causes of any changes. The judicial authority may order

²⁶⁷ See <https://www.normattiva.it/do/atto/export>. Accessed 30 June 2025.

²⁶⁸ **Art. 17. Dichiarazioni relative alle misure di indagine di cui all'articolo 30 del regolamento.**

1. Ai fini di cui all'articolo 30, paragrafi 1 e 3, del regolamento, i procuratori europei delegati sono autorizzati a disporre o a chiedere le intercettazioni di conversazioni e le consegne controllate di merci nei limiti e alle condizioni previste dalle norme vigenti.

2. Nei quindici giorni successivi alla data di entrata in vigore del presente decreto, il Governo, su proposta del Ministro della giustizia, notifica alla Procura europea l'elenco dei reati per i quali le norme vigenti consentono l'impiego, a fini di indagine penale, dell'intercettazione di conversazioni o comunicazioni e delle consegne controllate di merci.

²⁶⁹ **LIBRO TERZO PROVE TITOLO III Mezzi di ricerca della prova Capo I Ispezioni**

Art. 244. Casi e forme delle ispezioni.

1. L'ispezione delle persone, dei luoghi e delle cose è disposta con decreto motivato quando occorre accertare le tracce e gli altri effetti materiali del reato.

2. Se il reato non ha lasciato tracce o effetti materiali, o se questi sono scomparsi o sono stati cancellati o dispersi, alterati o rimossi, l'autorità giudiziaria descrive lo stato attuale e, in quanto possibile, verifica quello preesistente, curando anche di individuare modo, tempo e cause delle eventuali modificazioni. L'autorità giudiziaria può disporre rilievi segnaletici, descrittivi e fotografici e ogni altra operazione tecnica, anche in relazione a sistemi informatici o telematici, adottando misure tecniche dirette ad assicurare la conservazione dei dati originali e ad impedirne l'alterazione.

reporting, descriptive and photographic surveys and any other technical operation, also in relation to IT or telematic systems, adopting technical measures aimed at ensuring the conservation of the original data and preventing its alteration.

Article 248 CPC²⁷⁰ Request for handing over

1. If a specific thing is sought through the search, the judicial authority may request that it be handed over. If the thing is presented, the search is not carried out, unless it is deemed useful to do so for the completeness of the investigation.

2. In order to trace the things to be seized or to ascertain other circumstances useful for the purposes of the investigations, the judicial authority or the judicial police officers delegated by it may examine deeds, documents and correspondence as well as data, information and computer programs in banks. (1) In case of refusal, the judicial authority carries out a search.

d) Para 2: Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation, Art. 29

Without prejudice to Article 29, the investigation measures set out in paragraph 1 of this Article may be subject to conditions in accordance with the applicable national law if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.

39

Article 103 CPC Guarantees of freedom of the defender²⁷¹

1. Inspections and searches in the offices of the lawyers are only permitted:

²⁷⁰ **Art. 248. Richiesta di consegna.**

1. Se attraverso la perquisizione si ricerca una cosa determinata, l'autorità giudiziaria può invitare a consegnarla. Se la cosa è presentata, non si procede alla perquisizione, salvo che si ritenga utile procedervi per la completezza delle indagini.

2. Per rintracciare le cose da sottoporre a sequestro o per accertare altre circostanze utili ai fini delle indagini, l'autorità giudiziaria o gli ufficiali di polizia giudiziaria da questa delegati possono esaminare presso banche atti, documenti e corrispondenza nonché dati, informazioni e programmi informatici. (1) In caso di rifiuto, l'autorità giudiziaria procede a perquisizione.

²⁷¹ **Art. 103. Garanzie di libertà del difensore.**

1. Le ispezioni e le perquisizioni negli uffici dei difensori sono consentite solo:

a) quando essi o altre persone che svolgono stabilmente attività nello stesso ufficio sono imputati, limitatamente ai fini dell'accertamento del reato loro attribuito;

b) per rilevare tracce o altri effetti materiali del reato o per ricercare cose o persone specificamente predeterminate.

2. Presso i difensori e gli investigatori privati autorizzati e incaricati in relazione al procedimento, nonché presso i consulenti tecnici non si può procedere a sequestro di carte o documenti relativi all'oggetto della difesa, salvo che costituiscano corpo del reato.

3. Nell'accingersi a eseguire una ispezione, una perquisizione o un sequestro nell'ufficio di un difensore, l'autorità giudiziaria a pena di nullità avvisa il consiglio dell'ordine forense del luogo perché il presidente o un consigliere

- a) when they or other persons who permanently carry out activities in the same office are accused, limited to the purpose of ascertaining the crime attributed to them;
 - b) to detect traces or other material effects of the crime or to search for specifically predetermined things or people.
2. It is not possible to seize papers or documents relating to the object of the defence from the lawyers and private investigators authorised and appointed in relation to the proceedings, as well as from the technical consultants, unless they constitute the body of the crime.
 3. In preparing to carry out an inspection, search or seizure in the office of a lawyer, the judicial authority, under penalty of nullity, informs the council of the local bar so that the president or an adviser delegated by this person can assist to operations. The same person, if he intervenes and requests it, a copy of the provision is delivered.
 4. The judge or, in the course of the preliminary investigations, the public prosecutor authorised by the judge personally proceeds with the inspections, searches and seizures in the offices of the lawyers.
 5. The interception relating to conversations or communications of the lawyers, of the private investigators authorised and appointed in relation to the proceedings, of the technical consultants and their auxiliaries, or of those between them and the persons assisted by them, is not permitted.
 6. The seizure and any form of control of the correspondence between the accused and his or her defence counsel is prohibited as it is recognizable by the prescribed indications, unless the judicial authority has justified reasons to believe that it is a body of the crime.
 7. Except for the provisions of paragraph 3 and article 271, the results of inspections, searches, seizures, interception of conversations or communications, carried out in violation of the previous provisions, cannot be used. Without prejudice to the prohibition of use referred to in the first sentence, when communications and conversations are in any case intercepted, their content cannot be transcribed, even summarily, and only the date, time and device on which registration has taken place is recorded in the minutes.

da questo delegato possa assistere alle operazioni. Allo stesso, se interviene e ne fa richiesta, è consegnata copia del provvedimento.

4. Alle ispezioni, alle perquisizioni e ai sequestri negli uffici dei difensori procede personalmente il giudice ovvero, nel corso delle indagini preliminari, il pubblico ministero in forza di motivato decreto di autorizzazione del giudice.

5. Non è consentita l'intercettazione relativa a conversazioni o comunicazioni dei difensori, degli investigatori privati autorizzati e incaricati in relazione al procedimento, dei consulenti tecnici e loro ausiliari, né a quelle tra i medesimi e le persone da loro assistite.

6. Sono vietati il sequestro e ogni forma di controllo della corrispondenza tra l'imputato e il proprio difensore in quanto riconoscibile dalle prescritte indicazioni, salvo che l'autorità giudiziaria abbia fondato motivo di ritenere che si tratti di corpo del reato.

7. Salvo quanto previsto dal comma 3 e dall'articolo 271, i risultati delle ispezioni, perquisizioni, sequestri, intercettazioni di conversazioni o comunicazioni, eseguiti in violazione delle disposizioni precedenti, non possono essere utilizzati. Fermo il divieto di utilizzazione di cui al primo periodo, quando le comunicazioni e conversazioni sono comunque intercettate, il loro contenuto non può essere trascritto, neanche sommariamente, e nel verbale delle operazioni sono indicate soltanto la data, l'ora e il dispositivo su cui la registrazione è intervenuta.

Article 249²⁷² Personal searches

1. Before proceeding with the personal search, a copy of the decree is given to the person concerned, with the notice of the right to be assisted by a trusted person, provided that this is readily available and suitable in accordance with Article 120.
2. The search is carried out with respect for the dignity and, as far as possible, the modesty of those who are subjected to it.

Article 251²⁷³ House searches. Time limits

1. The search in a house or in closed places adjacent to it cannot be started before seven o'clock and after twenty o'clock.
2. However, in urgent cases, the judicial authority may order in writing that the search be carried out outside the aforementioned time limits.

Article 256²⁷⁴ Duty of exhibition and secrets

1. The persons indicated in articles 200 and 201 must immediately deliver to the judicial authority, upon request, the deeds and documents, even in original if so ordered, as well as data, information and computer programs, also by means of a copy of them on adequate support, ⁽¹⁾ and any other thing existing with them for reasons of their office, position, ministry, profession or art, unless they declare in writing that it is a state secret or a secret inherent in their office or profession.

²⁷² **Art. 249 c.p.p. Perquisizioni personali.**

1. Prima di procedere alla perquisizione personale è consegnata una copia del decreto all'interessato, con l'avviso della facoltà di farsi assistere da persona di fiducia, purché questa sia prontamente reperibile e idonea a norma dell'articolo 120.
2. La perquisizione è eseguita nel rispetto della dignità e, nei limiti del possibile, del pudore di chi vi è sottoposto.

²⁷³ **Art. 251 c.p.p. Perquisizioni nel domicilio. Limiti temporali.**

1. La perquisizione in un'abitazione o nei luoghi chiusi adiacenti a essa non può essere iniziata prima delle ore sette e dopo le ore venti.
2. Tuttavia nei casi urgenti l'autorità giudiziaria può disporre per iscritto che la perquisizione sia eseguita fuori dei suddetti limiti temporali.

²⁷⁴ **Art. 256 c.p.p. Dovere di esibizione e segreti.**

1. Le persone indicate negli articoli 200 e 201 devono consegnare immediatamente all'autorità giudiziaria, che ne faccia richiesta, gli atti e i documenti, anche in originale se così è ordinato, nonché i dati, le informazioni e i programmi informatici, anche mediante copia di essi su adeguato supporto, ⁽¹⁾ e ogni altra cosa esistente presso di esse per ragioni del loro ufficio, incarico, ministero, professione o arte, salvo che dichiarino per iscritto che si tratti di segreto di Stato ovvero di segreto inerente al loro ufficio o professione.
2. Quando la dichiarazione concerne un segreto di ufficio o professionale, l'autorità giudiziaria, se ha motivo di dubitare della fondatezza di essa e ritiene di non potere procedere senza acquisire gli atti, i documenti o le cose indicati nel comma 1, provvede agli accertamenti necessari. Se la dichiarazione risulta infondata, l'autorità giudiziaria dispone il sequestro.
3. Quando la dichiarazione concerne un segreto di Stato, l'autorità giudiziaria ne informa il Presidente del Consiglio dei Ministri, chiedendo che ne sia data conferma. Qualora il segreto sia confermato e la prova sia essenziale per la definizione del processo, il giudice dichiara non doversi procedere per l'esistenza di un segreto di Stato.
4. Qualora, entro sessanta giorni dalla notificazione della richiesta, il Presidente del Consiglio dei Ministri non dia conferma del segreto, l'autorità giudiziaria dispone il sequestro.
5. Si applica la disposizione dell'articolo 204.

2. When the declaration concerns official or professional secrecy, the judicial authority, if it has reason to doubt its validity and considers that it cannot proceed without acquiring the deeds, documents or things indicated in paragraph 1, proceeds with necessary checks. If the declaration is unfounded, the judicial authority orders the seizure.
3. When the declaration concerns a state secret, the judicial authority informs the President of the Council of Ministers, asking for confirmation. If the secret is confirmed and the evidence is essential for the definition of the trial, the judge declares that there is no need to proceed for the existence of a state secret.
4. If, within sixty days of notification of the request, the President of the Council of Ministers does not confirm the secrecy, the judicial authority orders the seizure.
5. The provision of Article 204 applies.

Article 269 Record keeping²⁷⁵

1. The minutes and records, and any other related documents, are kept in their entirety in a special archive managed and kept under the direction and supervision of the Public Prosecutor of the office that requested and carried out the wiretapping. Only the minutes and recordings of communications and conversations acquired in the file referred to in Article 373, paragraph 5, or in any case used in the course of preliminary investigations, are not covered by secrecy. The judge for preliminary investigations and the defendants of the parties, after the filing made pursuant to articles 268 and 415-bis or in the case provided for by article 454, paragraph 2-bis, is permitted to exercise their rights and faculties access to the archive and listening to recorded conversations or communications.
2. Except as provided in Article 271 paragraph 3, the recordings are kept until the judgment is no longer subject to appeal. However, the interested parties, when the documentation is not necessary for the procedure, can request its destruction, to protect confidentiality, from the judge who authorised or validated the interception. The judge decides in chambers in accordance with article 127.

²⁷⁵ **Articolo 269. Conservazione della documentazione.**

1. I verbali e le registrazioni, e ogni altro atto ad esse relativo, sono conservati integralmente in apposito archivio gestito e tenuto sotto la direzione e la sorveglianza del Procuratore della Repubblica dell'ufficio che ha richiesto ed eseguito le intercettazioni. Non sono coperti da segreto solo i verbali e le registrazioni delle comunicazioni e conversazioni acquisite al fascicolo di cui all'articolo 373, comma 5, o comunque utilizzati nel corso delle indagini preliminari. Al giudice per le indagini preliminari e ai difensori delle parti, successivamente al deposito effettuato ai sensi degli articoli 268 e 415-bis o nel caso previsto dall'articolo 454, comma 2-bis, per l'esercizio dei loro diritti e facoltà è consentito l'accesso all'archivio e l'ascolto delle conversazioni o comunicazioni registrate.

[1-bis. Non sono coperti da segreto i verbali e le registrazioni delle comunicazioni e conversazioni acquisite al fascicolo di cui all'articolo 373, comma 5]

2. Salvo quanto previsto dall'articolo 271 comma 3, le registrazioni sono conservate fino alla sentenza non più soggetta a impugnazione. Tuttavia gli interessati, quando la documentazione non è necessaria per il procedimento, possono chiederne la distruzione, a tutela della riservatezza, al giudice che ha autorizzato o convalidato l'intercettazione. Il giudice decide in camera di consiglio a norma dell'articolo 127.

3. La distruzione, nei casi in cui è prevista, viene eseguita sotto controllo del giudice. Dell'operazione è redatto verbale.

3. Destruction, in cases where it is foreseen, is carried out under the supervision of the judge. Minutes of the operation are drawn up.

e) Para 3: Conditions/ Thresholds for investigation measures

40 *The investigation measures set out in points(c), (e) and (f) of paragraph 1 of this Article may be subject to **further conditions, including limitations, provided for in the applicable national law. In particular, Member States may limit the application of points (e) and (f) of paragraph 1 of this Article to specific serious offences. A Member State intending to make use of such limitation shall notify the EPPO of the relevant list of specific serious offences in accordance with Article 117.***

aa. Conditions and Limitations for investigation measures of Para 1(c)-(f)

41 The following crimes must be observed and taken into-account if investigating into the telecommunications of another person, suspected or not.

Article 615-ter of the Criminal Code (unauthorised access to an IT or telematic system)²⁷⁶

Article 615-quater of the Criminal Code (illegal possession, dissemination of **and abusive installation equipment, codes and other means for the** access to IT or telematic systems)²⁷⁷

Article 615-quinquies of the Criminal Code (**illegal possession, dissemination and abusive installation** of equipment, devices or computer programs aimed at damaging or interrupting an IT or telematic system)²⁷⁸

Article 617-bis of the Criminal Code (**illegal possession, dissemination and abusive installation** of equipment designed to intercept or prevent telegraphic or telephone communications or conversations)²⁷⁹

²⁷⁶ **Art. 615-ter.**

Accesso abusivo ad un sistema informatico o telematico.

²⁷⁷ **Art. 615-quater.**

Detenzione e diffusione abusiva di codici di accesso a sistemi informatici o telematici.

²⁷⁸ **Art. 615-quinquies.**

Diffusione di apparecchiature, dispositivi o programmi informatici diretti a danneggiare o interrompere un sistema informatico o telematico.

²⁷⁹ **Art. 617-bis.**

Installazione di apparecchiature atte ad intercettare od impedire comunicazioni o conversazioni telegrafiche o telefoniche.

Article 617-ter of the Criminal Code (falsification, alteration or suppression of the content of telegraphic or telephone communications or conversations)²⁸⁰

Article 617-quater of the Criminal Code (interception, impediment or unlawful interruption of computer or telematic communications)²⁸¹

Article 635-quater of the Criminal Code (damage to IT or telematic systems)²⁸²

Article 635-quinquies of the Criminal Code (damage to IT or telematic systems of public utility)²⁸³

Article 640-ter of the Criminal Code (computer fraud)²⁸⁴

Article 640-quinquies of the Italian Criminal Code (IT fraud by the subject providing e-mail certification services).²⁸⁵

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

For the restrictions see above in the respective provisions cited under Art. 30 EPPO Regulation para 1 e and f. **42**

f) Notifications according to the last sentence of para. 3

Italy has notified the EPPO. **43**

g) Para 4: Any other measure(s) in the EDP's Member State

The European Delegated Prosecutors shall be entitled to request or to order any other measures in their Member State that are available to prosecutors under national law in similar national cases, in addition to the measures referred to in paragraph 1. **44**

²⁸⁰ **Art. 617-ter.**

Falsificazione, alterazione o soppressione del contenuto di comunicazioni o conversazioni telegrafiche o telefoniche.

²⁸¹ **Art. 617-quater.**

Intercettazione, impedimento o interruzione illecita di comunicazioni informatiche o telematiche.

²⁸² **Art. 635-quater.**

Danneggiamento di sistemi informatici o telematici

²⁸³ **Art. 635-quinquies.**

Danneggiamento di sistemi informatici o telematici di pubblica utilità

²⁸⁴ **Art. 640-ter.**

Frode informatica.

²⁸⁵ **Art. 640-quinquies.**

Frode informatica del soggetto che presta servizi di certificazione di firma elettronica

45 Acoustic and visual surveillance in public and private spaces is considered to be nothing else than wiretapping and therefore Article 266 CPP can be listed here.²⁸⁶

46 **Chapter IV Wiretapping of conversations or communications**

Article 266 Limits of admissibility

1. The interception of telephone conversations or communications and other forms of telecommunication is permitted in proceedings relating to the following crimes:

- a) non-culpable crimes for which the penalty of life imprisonment or imprisonment exceeding a maximum of five years determined in accordance with Article 4;
- b) crimes against the public administration for which the penalty of imprisonment of not less than a maximum of five years determined in accordance with article 4 is envisaged;
- c) crimes concerning narcotic or psychotropic substances;
- d) crimes concerning weapons and explosive substances;
- e) smuggling offenses;
- f) crimes of insult, threat, usury, abusive financial activity, abuse of privileged information, market manipulation, harassment or disturbance to people by telephone;
- f-bis) crimes provided for by article 600-ter, third paragraph, of the criminal code, even if relating to pornographic material referred to in article 600-quater.1 of the same code, as well as by Art. 609-undecies;
- f-ter) crimes provided for in articles 444, 473, 474, 515, 516, 517-quater and 633, second paragraph, of the criminal code;
- f-quater) crime envisaged by article 612-bis of the criminal code;
- f-quinquies) crimes committed making use of the conditions provided for by article 416-bis of the criminal code or in order to facilitate the activities of the associations envisaged by the same article.

2. In the same cases, the interception of communications between present is allowed, which can also be performed by inserting a computer sensor on a portable electronic device. However, if these take place in the places indicated in article 614 of the criminal code, interception is allowed only if there is well-founded reason to believe that the criminal activity is taking place there.

2-bis. The interception of communications between those present by inserting a computer detector on a portable electronic device is always permitted in the proceedings for the crimes referred to in Article 51, paragraphs 3-bis and 3-quater, and, after indicating the reasons justifying the “ use also in the places indicated in article 614 of the criminal code, for the crimes of public officials or persons in charge of public service against the public administration for which the penalty of imprisonment of not less than five years, determined in accordance with of article 4.

²⁸⁶ Cf. . Ruggiieri and Marcolini 2013, p. 368 (380 et seq.).

h) Para 5: National Procedures and national modalities for taking investigative measures and Special Use of Expert Witnesses

*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.***

47

aa. Rules Governing the National Procedures

In the following answers to the question, which national rules govern the procedures and the modalities for taking the measures are presented with exemplary provisions:

48

Inspections

Article 244 Cases and forms of inspections²⁸⁷

1. The inspection of people, places and things is ordered by a reasoned decree when it is necessary to ascertain the traces and other material effects of the crime.
2. If the offense has not left any traces or material effects, or if these have disappeared or have been cancelled or dispersed, altered or removed, the judicial authority describes the current state and, as far as possible, verifies the pre-existing one, also taking care of identify the manner, time and causes of any changes. The judicial authority may order reporting, descriptive and photographic surveys and any other technical operation, also in relation to IT or telematic systems, adopting technical measures aimed at ensuring the conservation of the original data and preventing its alteration.

49

²⁸⁷ **Capo I Ispezioni**

Art. 244. Casi e forme delle ispezioni.

1. L'ispezione delle persone, dei luoghi e delle cose è disposta con decreto motivato quando occorre accertare le tracce e gli altri effetti materiali del reato.
2. Se il reato non ha lasciato tracce o effetti materiali, o se questi sono scomparsi o sono stati cancellati o dispersi, alterati o rimossi, l'autorità giudiziaria descrive lo stato attuale e, in quanto possibile, verifica quello preesistente, curando anche di individuare modo, tempo e cause delle eventuali modificazioni. L'autorità giudiziaria può disporre rilievi segnaletici, descrittivi e fotografici e ogni altra operazione tecnica, anche in relazione a sistemi informatici o telematici, adottando misure tecniche dirette ad assicurare la conservazione dei dati originali e ad impedirne l'alterazione.

Chapter II Searches

Article 247 Cases and forms of searches²⁸⁸

1. When there is *well-founded reason* to believe that someone conceals the body of the crime or things pertinent to the crime from the person, a personal search is ordered. When there is well-founded reason to believe that such things are in a specific place or that the arrest of the accused or the escaped person can be carried out there, a local search is ordered.

1-bis. When there is well-founded reason to believe that data, information, computer programs or traces in any case pertinent to the crime are found in an IT or telematic system, even if protected by security measures, they are searched, adopting technical measures aimed at ensuring their conservation. of the original data and to prevent it from being altered.

2. The search is ordered by a reasoned decree.

3. The judicial authority can proceed personally or arrange for the act to be carried out by judicial police officers delegated with the same decree.

Article 267 Conditions and forms of the measure

1.²⁸⁹ The public prosecutor asks the judge for preliminary investigations for authorisation to order the operations envisaged by Art. 266. Authorisation is given by a reasoned

²⁸⁸ **Capo II CPP Perquisizioni**

Art. 247. Casi e forme delle perquisizioni.

1. Quando vi è *fondato motivo* di ritenere che taluno occulti sulla persona il corpo del reato o cose pertinenti al reato, è disposta perquisizione personale. Quando vi è fondato motivo di ritenere che tali cose si trovino in un determinato luogo ovvero che in esso possa eseguirsi l'arresto dell'imputato o dell'evaso, è disposta perquisizione locale.

1-bis. Quando vi è fondato motivo di ritenere che dati, informazioni, programmi informatici o tracce comunque pertinenti al reato si trovino in un sistema informatico o telematico, ancorchè protetto da misure di sicurezza, ne è disposta la perquisizione, adottando misure tecniche dirette ad assicurare la conservazione dei dati originali e ad impedirne l'alterazione. (1)

2. La perquisizione è disposta con decreto motivato.

3. L'autorità giudiziaria può procedere personalmente ovvero disporre che l'atto sia compiuto da ufficiali di polizia giudiziaria delegati con lo stesso decreto.

²⁸⁹ **Art. 267. Presupposti e forme del provvedimento.**

1. Il pubblico ministero richiede al giudice per le indagini preliminari l'autorizzazione a disporre le operazioni previste dall'Art. 266. L'autorizzazione è data con decreto motivato quando vi sono gravi indizi di reato e l'intercettazione è assolutamente indispensabile ai fini della prosecuzione delle indagini. Il decreto che autorizza l'intercettazione tra presenti mediante inserimento di captatore informatico su dispositivo elettronico portatile indica le ragioni che rendono necessaria tale modalità per lo svolgimento delle indagini; nonché, se si procede per delitti diversi da quelli di cui all'articolo 51, commi 3-bis e 3-quater, e dai delitti dei pubblici ufficiali o degli incaricati di pubblico servizio contro la pubblica amministrazione per i quali è prevista la pena della reclusione non inferiore nel massimo a cinque anni, determinata a norma dell'articolo 4, i luoghi e il tempo, anche indirettamente determinati, in relazione ai quali è consentita l'attivazione del microfono.

1-bis. Nella valutazione dei gravi indizi di reato si applica l'articolo 203.

2. Nei casi di urgenza, quando vi è fondato motivo di ritenere che dal ritardo possa derivare grave pregiudizio alle indagini, il pubblico ministero dispone l'intercettazione con decreto motivato, che va comunicato immediatamente

decree when there are serious indications of a crime and the interception is absolutely essential for the prosecution of the investigation. The decree that authorises the interception between those present by inserting a computer sensor on a portable electronic device indicates the reasons that make this procedure necessary for carrying out the investigations; as well as, if one proceeds for crimes other than those referred to in Article 51, paragraphs 3-bis and 3-quater,

1-bis. In the assessment of serious evidence of crime, Article 203 applies.

2. In cases of urgency, when there is well-founded reason to believe that the delay could cause serious damage to the investigation, the public prosecutor orders the interception with a reasoned decree, which it must be communicated immediately and in any case no later than twenty-four hours to the judge indicated in paragraph 1. The judge, within forty-eight hours from the provision, decides on validation with a motivated decree. If the decree of the public prosecutor is not validated within the established deadline, the interception cannot be continued and the results of it cannot be used.

Article 269 Record keeping

1.²⁹⁰ The minutes and records, and any other related documents, are kept in their entirety in a special archive managed and kept under the direction and supervision of the Public

e comunque non oltre le ventiquattro ore al giudice indicato nel comma 1. Il giudice, entro quarantotto ore dal provvedimento, decide sulla convalida con decreto motivato. Se il decreto del pubblico ministero non viene convalidato nel termine stabilito, l'intercettazione non può essere proseguita e i risultati di essa non possono essere utilizzati.

2-bis. Nei casi di cui al comma 2, il pubblico ministero può disporre, con decreto motivato, l'intercettazione tra presenti mediante inserimento di captatore informatico su dispositivo elettronico portatile soltanto nei procedimenti per i delitti di cui all'articolo 51, commi 3-bis e 3-quater e per i delitti dei pubblici ufficiali o degli incaricati di pubblico servizio contro la pubblica amministrazione per i quali è prevista la pena della reclusione non inferiore nel massimo a cinque anni, determinata a norma dell'articolo 4. A tal fine indica, oltre a quanto previsto dal comma 1, secondo periodo, le ragioni di urgenza che rendono impossibile attendere il provvedimento del giudice. Il decreto è trasmesso al giudice che decide sulla convalida nei termini, con le modalità e gli effetti indicati al comma 2.

3. Il decreto del pubblico ministero che dispone l'intercettazione indica le modalità e la durata delle operazioni. Tale durata non può superare i quindici giorni, ma può essere prorogata dal giudice con decreto motivato per periodi successivi di quindici giorni, qualora permangano i presupposti indicati nel comma 1.

4. Il pubblico ministero procede alle operazioni personalmente ovvero avvalendosi di un ufficiale di polizia giudiziaria.

5. In apposito registro riservato gestito, anche con modalità informatiche, e tenuto sotto la direzione e la sorveglianza del Procuratore della Repubblica, sono annotati, secondo un ordine cronologico, i decreti che dispongono, autorizzano, convalidano o prorogano le intercettazioni e, per ciascuna intercettazione, l'inizio e il termine delle operazioni.

²⁹⁰ **Art. 269. Conservazione della documentazione.**

1. I verbali e le registrazioni, e ogni altro atto ad esse relativo, sono conservati integralmente in apposito archivio gestito e tenuto sotto la direzione e la sorveglianza del Procuratore della Repubblica dell'ufficio che ha richiesto ed eseguito le intercettazioni. Non sono coperti da segreto solo i verbali e le registrazioni delle comunicazioni e conversazioni acquisite al fascicolo di cui all'articolo 373, comma 5, o comunque utilizzati nel corso delle indagini preliminari. Al giudice per le indagini preliminari e ai difensori delle parti, successivamente al deposito effettuato

Prosecutor of the office that requested and carried out the wiretapping. Only the minutes and recordings of communications and conversations acquired in the file referred to in Article 373, paragraph 5, or in any case used in the course of preliminary investigations, are not covered by secrecy. The judge for preliminary investigations and the defendants of the parties, after the filing made pursuant to articles 268 and 415-bis or in the case provided for by article 454, paragraph 2-bis, is permitted to exercise their rights and faculties access to the archive and listening to recorded conversations or communications.

2. Except as provided in Article 271 paragraph 3, the recordings are kept until the judgment is no longer subject to appeal. However, the interested parties, when the documentation is not necessary for the procedure, can request its destruction, to protect confidentiality, from the judge who authorised or validated the interception. The judge decides in chambers in accordance with article 127.

3. Destruction, in cases where it is foreseen, is carried out under the supervision of the judge. Minutes of the operation are drawn up.

Article 355 Validation of the seizure and its review²⁹¹

1. In the event that it has proceeded with a seizure, the judicial police shall state the reason for the provision in the relative report and deliver a copy to the person whose things were seized. The report is sent without delay, and in any case no later than forty-eight hours, to the public prosecutor of the place where the seizure was carried out.

2. The public prosecutor, in the following forty-eight hours, validates the seizure with a reasoned decree if the conditions are met or orders the restitution of the seized items. A

ai sensi degli articoli 268 e 415-bis o nel caso previsto dall'articolo 454, comma 2-bis, per l'esercizio dei loro diritti e facoltà è consentito l'accesso all'archivio e l'ascolto delle conversazioni o comunicazioni registrate.

[1-bis. Non sono coperti da segreto i verbali e le registrazioni delle comunicazioni e conversazioni acquisite al fascicolo di cui all'articolo 373, comma 5]

2. Salvo quanto previsto dall'articolo 271 comma 3, le registrazioni sono conservate fino alla sentenza non più soggetta a impugnazione. Tuttavia gli interessati, quando la documentazione non è necessaria per il procedimento, possono chiederne la distruzione, a tutela della riservatezza, al giudice che ha autorizzato o convalidato l'intercettazione. Il giudice decide in camera di consiglio a norma dell'articolo 127.

3. La distruzione, nei casi in cui è prevista, viene eseguita sotto controllo del giudice. Dell'operazione è redatto verbale.

²⁹¹ **Art. 355. Convalida del sequestro e suo riesame.**

1. Nel caso in cui abbia proceduto a sequestro, la polizia giudiziaria enuncia nel relativo verbale il motivo del provvedimento e ne consegna copia alla persona alla quale le cose sono state sequestrate. Il verbale è trasmesso senza ritardo, e comunque non oltre le quarantotto ore, al pubblico ministero del luogo dove il sequestro è stato eseguito.

2. Il pubblico ministero, nelle quarantotto ore successive, con decreto motivato convalida il sequestro se ne ricorrono i presupposti ovvero dispone la restituzione delle cose sequestrate. Copia del decreto di convalida è immediatamente notificata alla persona alla quale le cose sono state sequestrate.

3. Contro il decreto di convalida, la persona nei cui confronti vengono svolte le indagini e il suo difensore, la persona alla quale le cose sono state sequestrate e quella che avrebbe diritto alla loro restituzione possono proporre, entro dieci giorni dalla notifica del decreto ovvero dalla diversa data in cui l'interessato ha avuto conoscenza dell'avvenuto sequestro, richiesta di riesame, anche nel merito, a norma dell'articolo 324.

4. La richiesta di riesame non sospende l'esecuzione del provvedimento.

copy of the validation decree is immediately notified to the person to whom the things were seized.

3. Against the validation decree, the person against whom the investigations are carried out and his defender, the person to whom the things were seized and the person who would have the right to their restitution may propose, within ten days of notification of the decree or from the different date on which the interested party became aware of the seizure, request for review, also on the merits, pursuant to article 324.

4. The request for review does not suspend the execution of the provision.

Article 357 Documentation of the judicial police activity

See above → Article 27 Right of , Urgent measures of national authorities for securing an investigation and prosecution.

bb. The Use of OLAF Investigators as Special Witnesses in an EPPO Proceeding

A report from the European Council explained already in 2011 that OLAF Investigators of any OLAF Unit (shared or own management etc.) can be requested to operate as a special expert in an on-going criminal trial before an Italian court. Thus in the investigation phase, an EDP will need to contact and cooperate with OLAF already (see Art. 12a-g, especially Art. 12e OLAF Regulation below). The report said the following:

50

“5.1.3. Participation of OLAF officials in a[n Italian] criminal investigation

In the event of criminal inquiries, the sole function of OLAF agents/investigators is to act as expert witnesses for the Public Prosecutor at the request of a Judicial Authority and/or of Judicial Police Assistant at the request of the Judicial Police (whether by delegation or not).



In the former case the expert witness is appointed pursuant to ex Article 359 of the Code of Criminal Procedure: he/she must possess specific technical, scientific or other skills and carry out an activity not only consisting in the performance of concrete actions that imply a certain level of technical ability but also and above all in the critical analysis of the results of such activities. Hence, the expert witness plays a role also during the trial at the initiative of the Judicial Authority. The appointment does not require/involve the opening of a case/file at OLAF. On the contrary, the criminal proceeding is sometimes instituted as a result of or within the framework of OLAF’s administrative investigations. In these cases, appointing an expert witness makes it possible for the Office (having administrative powers only) to maintain an active role in a criminal context. In the latter case, Article 348(4) of the Code of Criminal Procedure states that, within the framework of their autonomous activity or of an activity performed by delegation of the Public Prosecutor, the Judicial Police, should they not intend or not be able to undertake actions or carry out operations “requiring specific technical skills”, are empowered to

avail themselves of “suitable persons” who are obliged to give their services. Though legally possible, we are not aware of any such case.”²⁹²

51 *Lasagni* has pointed out further information concerning this question in an article from 2015:

“On the other hand, in practice the problems due to the usability of the statements made outside the criminal trial are typically resolved, especially when liable to have a decisive role for the purposes of the prosecution, through the reinstatement in the forms provided for by the code of procedure, using statements made during OLAF’s investigations for dispute purposes. With these corrections, to date the final reports of the investigations carried out by the Anti-Fraud Office are generally included in the hearing file pursuant to Art. 234 c.p.p. 45

Another way in which the evidence collected in administrative investigations can be introduced into the criminal trial is through the testimony of OLAF agents, subject to authorisation by the Central Office. In the absence of specific regulatory provisions, the regime with which these subjects are heard is left to the appreciation of the courts in the various legal systems. In Italy, in practice, the position of OLAF agents is generally equated to that of witnesses pursuant to Art. 198 c.p.p.

In the majority of cases, therefore, the investigators of the Anti-Fraud Office are not subject to the limitations envisaged for judicial police officers pursuant to Art. 195, paragraph 4 of the Code of Criminal Procedure; on the contrary, they are required to report to the court all the elements of their knowledge, including the content of any statements collected during the investigation. Unless, as rarely happens, public prosecutor consultants have also been appointed, OLAF agents are not however authorised to produce in court any reports used as a support to the memory, the acquisition of which at the trial is therefore left to the initiative of the party.”²⁹³

52 As seen, in EPPO cases, OLAF investigators can only act as expert witnesses (Art. 359 c.p.p.) or technical assistants to the judicial police (Art. 348 para 4 c.p.p.), providing specialised analysis; their testimony and OLAF reports may be introduced under Arts. 198 and 234 c.p.p., ensuring compliance with EPPO-OLAF cooperation rules.

53 Thus we can conclude following steps for any EDP:



Note to EDPs:

Step 1: Identify the need for technical expertise (e.g. for evidence of a certain PIF conduct) that needs to be proved in an Italian court

²⁹² See European Council 2011, p. 70.

²⁹³ See *Lasagni* 2015, p. 11.

– OLAF investigator must offer specific technical, scientific, or analytical skills due to Regulation requirements and interla guidelines (e.g. Digital Forensic Evidence Guidelines),

– task involves critical assessment of investigative results, not only performing practical tasks.

Step 2: Choose the legal basis and the reasoning, draft progree report, include in case files all essential information, names, personal data, contact etc.

– Art. 359 c.p.p.: appoint as expert witness (consulente tecnico del PM) at the request of the EDP/judicial authority,

– Art. 348 para 4 c.p.p.: involve as technical assistant for judicial police or Guardia di Finanza if special skills are needed.

Step 3: Ensure admissibility in criminal economic trial(s) acc. to Art. 36 EPPO Regulation before the court due to the decision with Art. 26 EPPO Regulation where to carry out investigations, use Internal Rules of Procedure, eventually EP and cite provisions on evidence gathering and submission, involve Permanent Chambers and draft progress report, submit to Chamber and follow all internal EPPO Guidelines published and any to be published in the future:

– OLAF reports can enter courts possibly e.g. via Art. 234 of the Italian c.p.p. (documents in the hearing file),

– OLAF agents (may eventually) testify as ordinary witnesses under Art. 198 c.p.p. – if contested ensure legal reasoning, cite legal authorities, and judgements from the Case law table precedeing Part A in our volume above (see A. I.),

– they are not restricted by Art. 195 para 4 c.p.p., so they may recount all knowledge including statements collected during administrative investigations.

Step 4: Observe EPPO & OLAF Regulations as they are the fundamental frameworks for any further steps as well as the ECJ jurisprudence on these matters

– Coordinate e.g. eventually with OLAF Central Office Units for authorisation (use EPPO Case Management System, Legal Office and contacts to ensure the right contact),

– Ensure consistency with Art. 12a–12g OLAF Regulation, especially Art. 12e on cooperation with national proceedings (see below in Part C).

– keep all information and drafts available for further steps, use protocols to ensure applicability and admissibility of any step to introduce evidence to prove a PIF conduct

2. Article 31 Cross-border investigations

1. The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the handling European Delegated Prosecutor, the latter European Delegated Prosecutor ***shall decide on the adoption of the necessary measure and assign it to a European Delegated Prosecutor*** located in the Member State where the measure needs to be carried out.

2. The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30. **The justification and adoption of such measures shall be governed by the law of the Member States' of the handling European Delegated Prosecutor.** Where the handling European Delegated Prosecutor assigns an investigation measure to one or several European Delegated Prosecutors from another Member State, he/she shall at the same time inform his supervising European Prosecutor.

3. If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor shall obtain that authorisation in accordance with the law of that Member State. If judicial authorisation for the assigned measure is refused, the handling European Delegated Prosecutor shall withdraw the assignment.

However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor requires it, ***the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment.***

4. The assisting European Delegated Prosecutor shall undertake the assigned measure, or instruct the competent national authority to do so.

5. Where the assisting European Delegated Prosecutor considers that:

- (a) the assignment is incomplete or contains a manifest relevant error;
- (b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons;
- (c) an alternative but less intrusive measure would achieve the same results as the measure assigned; or
- (d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his/her Member State,

he/she shall inform his supervising European Prosecutor and consult with the handling European Delegated Prosecutor in order to resolve the matter bilaterally.

6. If the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation, the European Delegated Prosecutors concerned may, in

agreement with the supervising European Prosecutors concerned, have recourse to such instruments.

7. If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.

8. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide without undue delay, **in accordance with applicable national law** as well as this Regulation, whether and by when the assigned measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision to the said European Delegated Prosecutors through the competent European Prosecutor.

a) Overview of general national codes and provisions

First of all the handling EDP from Italy will need to determine the Member State that relates to his/her investigations. Potentially this might be any Member State that is part of the EU and opted-in to the enhanced cooperation. The Italian EDP will need to identify the investigation measure (pls. refer to the other country chapters above and below in Part A of this compendium volume and pls. refer to Art. 32 for a comprehensive, comparative table of investigations measures including information on the obtainment of judicial authorisations in all participating and non-participating Member States). These measures might be challenged and tested by judges in the courts of the Member States.²⁹⁴

I. Determine the Member State, where the investigation measure needs to be carried out

II. Identify the measures by virtue of Art. 31 para 2 (all measures by virtue of Art. 30 EPPO Regulation)

III. Contact the regional EDP office (* information in the EPPO Case Management System and available to the general public on the Website of the EPPO)

IV. Officially assign the relevant measure


V. Adjust the follow-up and obey Art. 31 para 3–8 EPPO Regulation

Applicable codes:

Codice di Procedura Penale

Codice Penale

²⁹⁴ See only Pfister 2024 in German explaining that the review in the *executing* state is generally limited to enforcement, while the *ordering* state's court provides substantive review of suspicion and mainly proportionality for serious interferences of fundamental rights of the suspect.

 **! Please take a look into the Austrian and German Volume**, which both explore and explain Article 31 EPPO Regulation and its mechanism in greater details.

b) Para 2: Assignment of measures by a handling EDP to an assisting EDP in another, foreign MS

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

aa. Availability of measures to the EDP in Italy

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

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

bb. Justification and adoption of such measures governed by the law of the MS' of the handling EDP

6 *Sources & national sections 2: Art. 31 EPPO Regulation: Overview for Italy*

<p>“The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30 [EPPO Regulation]...”</p>	<p>List of provisions that are printed in full length above → Article 30.</p> <p><i>In this table “Article” is shortened to “Art.” for better readability.</i></p>
<p>Art. 30 para 1 (a)</p>	<p>Art. 30 para 1 (a) Art. 244 et seq. stipulates provisions for inspections but Art. 247 et seq. stipulate provisions for searches (<i>Perquisizioni</i>) CPC, Art. 247 – Cases and forms of searches Art. 248 – Request for handing over Art. 249 – Personal searches Art. 250 – Local searches Art. 251 – House searches. Time limits Art. 252 – Seizure following a search</p>
<p>Art. 30 para 1 (c)</p>	<p>Art. 30 para 1 (b) Art. 262, Art. 316–321 (Chapter 1 and 2) Art. 321 (sequestro preventivo), 368, 253, 252, 254; 671 CPC.</p>

	<p>In detail the following provisions should be consulted by an Italian EDP in a case, which involves Italy.</p> <p>Art. 253 – Object and formality of the seizure Art. 254 – Seizure of correspondence Art. 254 bis – Seizure of IT data from IT, telematic and telecommunication service providers Art. 255 – Seizure from banks Art. 256 – Duty of exhibition and secrets Art. 256bis – Acquisition of documents, deeds or other things by the judicial authority at the offices of the security information services Art. 256ter – Acquisition of deeds, documents or other things for which state secrecy is raised Art. 257 – Review of the seizure decree Art. 258 – Copies of the documents seized Art. 259 – Custody of seized things Art. 260 – Affixing of seals to seized things. Perishable things. Destruction of seized things Art. 261 – Removal and re-affixing of seals Art. 262 – Duration of the seizure and return of the seized things Art. 263 – Procedure for the restitution of seized things</p>
<p>Art. 30 para 1 (d)</p>	<p>Art. 30 para 1 (c) Art. 240 CC Limitation: Article 51, paragraphs 3-bis and 3-quarter. Art. 30 para 1 (d) CPC EIO may be used, too.</p>
<p>Art. 30 para 1 (e)</p>	<p>Art. 30 para 1 (e) Art. 254bis seizure of IT data from IT, telematic and telecommunication service providers, Art. 266 – limits of admissibility, Art. 266bis – Interception of computer or telematic communications, Art. 267 – Conditions and forms of the provision, Art. 268 – Execution of operations, Art. 268bis – Filing of minutes and registrations [repealed], Art. 268ter – Acquisition of the investigation file [repealed], Art.</p>

	268quater – Terms and methods of the judge’s decision [REPEALED], Art. 269 – Conservation of documentation Art. 270 – Use in other proceedings, Art. 270bis – Service communications from members of the Department of Security Information and Security Information Services, Art. 271 – Prohibitions of use;
Art. 30 para 1 (f)	Art. 30 para 1 (f) Art. 354, 357 CPC; but cf. as well Art. 9 of Law no. 146 2006 amended Law no. 3 2019; Law 18 February 1992, n. 172, Art. 10 Art. 9

c) Para 3: Judicial authorisation for the measure required under the law of the Member State of the assisting European Delegated Prosecutor

- 7 In the case that judicial authorisation for the measure is required under the law of the Member State of the assisting EDP it must be obtained by the assisting i.e. not the EDP from the Member State that assigned the measure from his home Member State but the EDP that resides elsewhere and is not conducting or carrying out the investigation as his/her investigation.
- 8 If the handling EDP looks for information about the question if judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, he/she may refer to the other country chapters in this Manual and consult Art. 30 EPPO Regulation in the relevant chapter or take a closer look at Part B of the respective volume in the country-related book, where a comparative overview summarizes these situations.

d) Para 8: Decision by the Chamber concerning the execution of an assigned measure needed, or a substitute measure by the assisting EDP

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

3. Article 32 Enforcement of assigned measures

The assigned measures shall be carried out in accordance with this Regulation and **the law of the Member State of the assisting European Delegated Prosecutor.**

[National] Formalities and procedures expressly indicated by the handling European Delegated Prosecutor shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.

a) Accordance-clause: Assigned measures according to Para 2 of Art. 31

The accordance-clause requires the handling EDP to question the assisting EDP if he/she can carry out the assigned measures (see Art. 31 para 2 EPPO Regulation) a) in accordance with this Regulation and b) in accordance with the law of the Member State of the assisting EDP. The following table on the next page indicates in an abstract style, where to locate the law of the assisting Member State. How it works in practice, i.e.:

As EDP, one checks the “accordance” under Art. 31 para 2 EPPO Reg. As handling Italian EDP one must as next step verify that the assisting EDP can execute the measure both under the Regulation and under their national law.

Example: If an Italian handling EDP requests an electronic communication interception in Germany, the German EDP executes it according to StPO ss. 100a, 100g, following German rules on judicial authorisation. National law governs the method, EPPO law governs the framework

Searches of premises (Art. 30 para 1 (a) Reg.; see in the CNP volume):

- In Romania, governed by CPC Art. 156–168.
- In Austria, governed by ÖStPO §§ 93, 111, 119.
- Freezing and seizure of assets (Art. 30 (1)(d) Reg.):
- In Greece, apply Art. 39–40 AML Law 4557/2018 & CPC Art. 260.
- In Luxembourg, apply Law of 22 June 2022 on confiscated assets.

The handling Italian EDP may request additional formalities as we can see with this example: The handling EDP requests that a Belgian house search includes a video recording and immediate forensic copy of electronic devices. The Belgian EDP applies Code d’instruction criminelle Arts. 62, 90octies and complies with the extra formality if not acting against Belgian fundamental principles. As EDP he/she first identify the investigative measure (Art. 30 para 1 (a)–(f), confirms assisting EDP’s national legal basis (from the Member State overview), indicates the special formalities required for admissibility in the handling EDP’s trial, verifies again no conflict with fundamental principles of the assisting State and then assigns and monitors execution via the CMS (Art. 32 EPPO Reg.).

5 Sources & national sections 3: Art. 32 – Overview

Han- dling EDP	Country of origin of the assist- ing/or several assisting MS	“Article” is shortened to “Art.” within this table. A compara- tive mapping of national provisions is necessary to under- stand which Art 30 measures (search and seizure, freezing, interception, etc) can realistically be deployed and under what safeguards, time limits, and judicial authorisations. This comparison also highlights where procedural asymmetries may affect admissibility, proportionality assessments, and defence rights in EPPO cases. Accordingly, the table below aligns each Art 30(1)(a)–(f) measure with the relevant na- tional legal bases in assisting states, as these rules will gov- ern execution in typical EPPO/PIF cases.	
<i>See Art. 30 EPPO Regula- tion.</i>		“The law of the Member State of the assisting European Delegated Prosecu- tor.”	Art. 30 para 1 (a) Art. 30 para 1 (b) Art. 30 para 1 (c) Art. 30 para 1 (d) Art. 30 para 1 (e) Art. 30 para 1 (f)
	AT <i>see Art. 30 EPPO Regula- tion in the CNP- Volume.</i>	Strafprozessordnung (ÖStPO)	Art. 30 para 1 (a) ss. 93 para 2, 111 and 111 in combi- nation with 119 et seq., 119, 120– 122 StPO. Art. 30 para 1 (b) ss. 110, 111, 115, 122, 135 para 1, 144, 157 CPC. Art. 30 para 1 (c) ss. 76a, 110, 111, 112, 113, 114, 115 CPC, 135 para 2 CPC Art. 30 para 1 (d) ss. 110, 115, 122 CPC Art. 30 para 1 (e) ss. 135 para 3 CPC, s. 135a was re- cently declared unconstitutional! ²⁹⁵

²⁹⁵ See Eurojust 2021, pp. 9 et seq.

		<p>Art. 30 para 1 (f) Art. 30 para 1 f: ss. 130, 135 para 2 et seq. CPC</p>
<p>BG see <i>Art. 30 EPPO Regulation in the CNP-Volume.</i></p>	<p>Nakazatelno protsesualen kodeks</p>	<p>Art. 30 para 1 (a) Art. 159 et seq., 164 Art. 30 para 1 (b) Art. 159 et seq. CPC Art. 30 para 1 (c) - Art. 30 para 1 (d) Law on Administrative Offenses and Penalties; Art. 30 para 1 (e) Art. 165, 172 CPC Art. 30 para 1 (f) Art. 165, 172 CPC</p>
<p>BE see <i>Art. 30 EPPO Regulation in the CNP-Volume.</i></p>	<p>Code d’Instruction Criminelle</p>	<p>Art. 30 para 1 (a) Art. 62 (Art. 56), Art. 90<i>coties</i> search on premises of professionals eg lawyers (<i>juge d’instruction</i> Art.90<i>octies</i> s. 3) Art. 30 para 1 (b) Art. 35, 35bis (immovable property) s, 35<i>ter</i> (seizure of substitutes), 36, 37, 38, 39<i>bis</i> (computers) CPC. Art. 30 para 1 (c) Art. 30 para 1 (d) Art. 30 para 1 (e) Art. 39bis, 46bis, but mainly Art. 90<i>ter</i> Art. 30 para 1 (f) Art. 46<i>sexies</i> (<i>juge d’instruction</i> = Art. 46<i>sexies</i> s.s. 3, 5 CPC</p>

<p>CY see <i>Art. 30</i> <i>EPPO</i> <i>Regulation in the CNP-Volume.</i></p>	<p>Ο περί Ποινικής Δικονομίας Νόμος (ΚΕΦ.155)</p>	<p>Art. 30 para 1 (a) ss. 11 (for an arrest), 25 CPC (search without a warrant), 26 CPC (Power for means of transport research) Art. 30 para 1 (b) s. 33 CPC Art. 30 para 1 (e) see ss. 4, 5, 5a, 6, 6a The Protection of the Privacy of Private Communication (Interception of Conversations and Access to Recorded Content of Private Communication) Law of 1996 (92 (I) / 1996)^{296/} see as well Law on the Regulation of Electronic Communications and Postal Services Art. 30 para 1 (f) -</p>
<p>CZ see <i>Art. 30</i> <i>EPPO</i> <i>Regulation in the CNP-Volume.</i></p>	<p>Zákon č. 141/1961 Sb. Zákon o trestním řízení soudním (trestní řád)</p>	<p>Art. 30 para 1 (a) mainly ss. 82, 83 but see as well 112, 113, 114, 115 CPC Art. 30 para 1 (b) ss. 77b para 3, 78 (obligation to submit things with evidential value), 79, 79a²⁹⁷ (Securing crime tools and proceeds of crime), 79b CPC Art. 30 para 1 (c) ss. 5 et seq AML Act, s. 78 CPC, s. 88, 88a, CPC, 158d CPC, s. 97 (3) of Act No 127/2005 Coll. on Electronic Communication</p>

²⁹⁶ Ο περί Προστασίας του Απόρρητου της Ιδιωτικής Επικοινωνίας (Παρακολούθηση Συνδιαλέξεων και Πρόσβαση σε Καταγεγραμμένο Περιεχόμενο Ιδιωτικής Επικοινωνίας) Νόμος του 1996 (92(I)/1996).

²⁹⁷ § 79b. Doručení rozhodnutí o zajištění a vyrozumění o něm.

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

		<p>Art. 30 para 1 (d) ss. 8, 78 et seq.; 82 et seq. CPC in combination with Art. 496 Civil Code</p> <p>Art. 30 para 1 (e) s. 88 CPC</p> <p>Art. 30 para 1 (f) s. 113 CPC</p>
<p>DE <i>see</i> <i>Art. 30</i> <i>EPPO</i> <i>Regulation in</i> <i>the CNP-</i> <i>Volume.</i></p>	<p>Deutsche Strafprozessordnung</p>	<p>Art. 30 para 1 (a) ss.. 102–10, 110 CPC</p> <p>Art. 30 para 1 (b) Chapter 8 CPC, ss.. 94, 97 (Prohibition), 111c, s. 443 CPC</p> <p>Art. 30 para 1 (c) ss. 94–98, 99, 100, 108 CPC</p> <p>Art. 30 para 1 (d) ss. 73 et seq. CC; 111b CPC; Law on the reform of criminal asset confiscation</p> <p>Art. 30 para 1 (e) s. 100a° CPC, 100g CPC, 111k CPC</p> <p>Art. 30 para 1 (f) ss. 98a–e CPC, ss. 100g CPC, 100i CPC, ss. 161, 163, 163e, f CPC, para 4: ss. 95a StPO-E, 100c Residential surveillance, 100f acoustic surveillance outside the apartment according to § 100f, 110a the use of undercover investigators according to § 110a, source telephone surveillance, ss. 100a paragraph 1 sentences 1 to 3, paragraph 5, 100e StPO (telecommunications using laptops, PCs or IP telephony)</p>
<p>DK <i>see</i> <i>Art. 30</i> <i>EPPO</i> <i>Regulation in</i></p>	<p>Retsplejeloven Lov om rettens pleje</p>	<p>Art. 30 para 1 (a) *opted out of AFSJ = Chapter 73 Retsplejeloven: s. 793 “Dwellings and other housing, documents, pa-</p>

*the CNP-
Volume.*

pers and the like, as well as the contents of locked objects and 2) other objects as well as locations outside housing spaces.”

Art. 30 para 1 (b)

Chapter 74 ss. 801, 802, 802 para 3 (all of the suspect’s property) 803, 803a (an association’s assets), 807 (formalities during a seizure operation), 807a (seizure by everyone), 807b–807f (special rules on seizure eg in AML cases) Retsplejeloven.

Art. 30 para 1 (c)

See Tax Control Act/

Skattekontroll; Money Laundering Act.

Art. 30 para 1 (d)

ss. 75-77a CC; s. 804 Retsplejeloven and see CIR no 94 of 13/05/1952, Ministry of Justice More information, Circular on the police’s management of seized or deposited sums of money or securities/ CIR nr 94 af 13/05/1952, *Cirkulære om politiets forvaltning af beslaglagte eller deponerede pengebeløb eller værdipapirer.*

Art. 30 para 1 (e)

*opted out of AFSJ= but see the Fourth Book of the Code of Judicial Procedure (Retsplejeloven) Chapter 67 and 68 provide for investigative rules and measures; Chapter 71 finally introduces special investigative measures such as telecommunications surveillance. (Kapitel 71: *Indgreb i meddelelshemmeligheden, observation, dataaflæsning, forstyrrelse*

		<p><i>eller afbrydelse af radio- eller telekommunikation, blokering af hjemmesider og overtagelse af tv-overvågning)</i></p> <p>s. 780 et seq.</p> <p>Art. 30 para 1 (f)</p> <p>s. 791a Retsplejeloven</p>
<p>EE see <i>Art. 30</i> <i>EPPO</i> <i>Regulation in</i> <i>the CNP-</i> <i>Volume.</i></p>	<p>Kriminaalmenetluse seadustik</p>	<p>Art. 30 para 1 (a) ss. 91, 92, 470 para 5 CPC.</p> <p>Art. 30 para 1 (b) ss. 89 Seizure and examination of postal or telegraphic items; 123, 142 Seizure of property, 143; 470 (handing over of property to a foreign state).</p> <p>Art. 30 para 1 (c) s. 142 (2¹) CPC</p> <p>Art. 30 para 1 (d) See following Act: “Procedure for transfer, transfer and destruction of confiscated property, return of money from the transfer of property from the budget to the legal owner, accounting and destruction of physical evidence, storage, evaluation and transfer of seized property and assessment, transfer and destruction of quickly perishable physical evidence”</p> <p>Art. 30 para 1 (e) ss. 126¹ et seq. CPC</p> <p>Art. 30 para 1 (f) s. 126⁵. Covert surveillance, covert collection of comparative samples and conduct of initial examinations, covert examination and replacement of things; s. 126⁶. Covert examination of postal items</p>

<p>EL <i>see Art. 30 EPPO Regulation in the CNP-Volume.</i></p>	<p>Νόμος 4620/2019 - ΦΕΚ 96/Α/11-6-2019: Κώδικας Ποινικής Δικονομίας</p>	<p>s. 126⁹. Use of police agents</p> <p>Art. 30 para 1 (a) Art. 243 in combination with Art. 253, Art. 256 (night search in a house) CPC</p> <p>Art. 30 para 1 (b) Art. 260 (seizure of securities in banks other public or private institutions), Art. 260 para 2: “In case of refusal, they search and seize the useful documents and things.”, Art. 261 (asset freezing), Art. 263 (obligation of civil servants to deliver documents), *Art. 264 (General confiscation of documents); Art. 265 (confiscation of digital data).</p> <p>Art. 30 para 1 (c) Art. 258 et seq.; 260 para 2 CPC/ (Law 4619/2019) and see AML legislation Law 4557/2018</p> <p>Art. 30 para 1 (d) Art. 39, 40 AML legislation Law 4557/2018 and Art. 260 CPC</p> <p>Art. 30 para 1 (e) See Art. 3, 4 Law 2225/1994 For the protection of freedom and response and communication and other provisions as amended Law 4871/2021/<i>NOMOS YPI'APIΘ. 2225 ΦΕΚ 121/20.07.1994 Για την προστασία της ελευθερίας και ανταπόκρισης και επικοινωνίας και άλλες διατάξεις.</i></p> <p>Art. 30 para 1 (f) Art. 254 (cover investigation for certain crimes), Art. 254 para 1 c (controlled deliveries for certain crimes), Art. 255 special investigative acts in corruption cases</p>
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		Art. 255 para 1 (cover investigation in order to tackle corruption)
ES ²⁹⁸ <i>see</i> <i>Art. 30</i> <i>EPPO</i> <i>Regulation in</i> <i>the CNP-</i> <i>Volume.</i>	Ley de Enjuiciamiento Criminal	Art. 30 para 1 (a) Art. 46, 47 Organic Law 9/2021 (EPPO Adoption law, see Chapter on Spain), Art. 326 (description of the crime scene), 364 (special evidence gathering in cases of theft or fraud); and cf. mainly Art. 545 et seq. CPC Art. 30 para 1 (b) Art. 334, 367bis, 545 et seq. Art. 30 para 1 (c) Art. 127 CC Art. 30 para 1 (d) Art. 127, 128, 129, 301, 302, 303, 304 CC and AML legislation in combination with the Civil Procedure Code, Art. 367 et seq. CPC Art. 30 para 1 (e) Art. 588 bis et seq., 588ter et seq. CPC and <i>lex specialis</i> is provided for in Art. 48 Organic Law 9/2021 Art. 30 para 1 (f) Art. 588 bis et seq., 588ter et seq. and <i>lex specialis</i> is provided for in Art. 48 Organic Law 9/2021
FI <i>see</i> <i>Art. 30</i> <i>EPPO</i> <i>Regulation in</i> <i>the CNP-</i> <i>Volume.</i>	Laki oikeudenkäynnistä rikosasioissa 11.7.1997/689	Art. 30 para 1 (a) Chapter 8 ss. 1–34 Coercive Measures Act; see ss. 2, 3, 4, 5, 6–14 searches on premises Art. 30 para 1 (b) Chapter 2, s. 15 (dangerous objects) Police Act ²⁹⁹ ; Chapter 6 Seizure with the aim to secure property or payments, Chapter 7 Seizure and reproduction of the document, ss. 1, 5

²⁹⁸ See Villamarín López 2022, pp. 127–139.

²⁹⁹ See *Poliisilaki 22.7.2011/872*, cf. <https://www.finlex.fi/fi/laki/ajantasa/2011/20110872#L2P3>. Accessed 30 June 2025.

(Seizure and reproduction of parcels, etc.), 6, Coercive Measures Act [Legislation monitored until SDK 178/2022 (published on March 17, 2022)]

Art. 30 para 1 (c)

Section 23 of Chapter 8 Coercive Measures Act

Art. 30 para 1 (d)

Chapter 10, ss. 2 et seq. CC³⁰⁰

Art. 30 para 1 (e)

Chapter 5, s. 1 et seq., Chapter 6, s.s. 6 et seq. Police Act 7/22/2011 / 872³⁰¹; Chapter 3, s. 3, Subs.1 of the Preliminary Investigation Act, Act on the Prevention of Crime in Customs (623/2015), Chapter 10 ss. 1–4 of the Coercive Measures Act

Art. 30 para 1 (f)

Chapter 5, s. 1 et seq., Chapter 6, s.s. 6 et seq., ss. 30, 31, 32 et seq. Police Act³⁰²; ss. 23, 24, 24, 36 39, 40, 42 (controlled delivery) Law on Crime Prevention in Customs 5/22/2015 / 623³⁰³; Chapter 10, S. 3 of the Coercive Measures Act

Especially ss. 13 “Systematic monitoring and its conditions”, s. 15 “Covert access to information and its conditions” Police Act 7/22/2011 / 872

³⁰⁰ See https://www.finlex.fi/en/laki/kaannokset/1889/en18890039_20150766.pdf. Accessed 30 June 2025.

³⁰¹ See *Poliisilaki 22.7.2011/872*, cf. <https://www.finlex.fi/fi/laki/ajantasa/2011/20110872#L2P3>. Accessed 30 June 2025.

³⁰² See *Poliisilaki 22.7.2011/872*, cf. <https://www.finlex.fi/fi/laki/ajantasa/2011/20110872#L2P3>. Accessed 30 June 2025.

³⁰³ See *Laki rikostorjunnasta Tullissa 22.5.2015/623*, cf. <https://www.finlex.fi/fi/laki/ajantasa/2015/20150623#L3P23>. Accessed 30 June 2025.

<p>FR see <i>Art. 30</i> <i>EPPO</i> <i>Regulation in the CNP-Volume for the full text..</i></p>	<p>Code du procédure pénale</p>	<p>Art. 30 para 1 (a) <i>Depends on the investigatory framework. Pls. see French CNP-Volume.</i></p> <p>Art. 30 para 1 (b) <i>Depends on the investigatory framework. Pls. see CNP-Volume.</i></p> <p>Art. 30 para 1 (c) Art. L.871-1 of the Internal Security Code Article 230-1 to 230-5 Criminal Code (deciphering) Article 706-102-1 to 706-102-7 Criminal Code</p> <p>Art. 30 para 1 (d) <i>Depends on the investigatory framework. Pls. see French CNP-Volume.</i></p> <p>Art. 30 para 1 (e) <i>Depends on the investigatory framework. Pls. see French CNP-Volume.</i></p> <p>Art. 30 para 1 (f) <i>Depends on the investigatory framework. Pls. see French CNP-Volume.</i></p>
<p>HR see <i>Art. 30</i> <i>EPPO</i> <i>Regulation in the CNP-Volume.</i></p>	<p>Zakon o kaznenom postupku</p>	<p>Art. 30 para 1 (a) Art. 240 et seq. CPC, 251 (for a person) CPC, Art. 252 et seq. (Search of home and other premises), Art. 255 (search on a military facility), Art. 257 (search of computers), Art. 258 (search on a ship/aircraft).</p> <p>Art. 30 para 1 (b) Art. 206i, 261 et seq., Art. 262 (special reference to computers and data storage)</p> <p>Art. 30 para 1 (c) Art. 257, 258, 269, 260, 261, 262, 263 CPC, Art. 332–339 CPC</p> <p>Art. 30 para 1 (d) Art. 82 para 1 et seq. CPC</p> <p>Art. 30 para 1 (e) Art. 195, 196 CPC</p>

		<p>Art. 30 para 1 (f) -</p>
<p>HU see <i>Art. 30</i> <i>EPPO</i> <i>Regulation in the CNP-Volume.</i></p>	<p>2017. évi XC. Törvény a büntetőeljárásról *</p>	<p>Art. 30 para 1 (a) ss. 306, 307, Sec. 820 CPC</p> <p>Art. 30 para 1 (b) ss. 306, 307, 820</p> <p>Art. 30 para 1 (c) Art. 308, 309, 324 CPC</p> <p>Art. 30 para 1 (d) s. 151 CPC in combination with ss. 72-74 CC of Hungary and see Act LII, of 1994 on judicial enforcement.</p> <p>Art. 30 para 1 (e) ss. 261 et seq. Hungary Act XV. 2017.</p> <p>Art. 30 para 1 (f)</p>
<p>LT see <i>Art. 30</i> <i>EPPO</i> <i>Regulation in the CNP-Volume.</i></p>	<p>Lietuvos Respublikos baudžiamojo proceso kodekso</p>	<p>Art. 30 para 1 (a) mainly Art. 145 (search any premise or other place), 146 (search of a person), 147, 148, 149 CPC and see Art. 169 and 170 CPC in the pre-trial investigation phase, Art. 205, 206, 207 CPC</p> <p>Art. 30 para 1 (b) Art. 17-4 in connection with Art. 133 (security), 134 (seizure of documents), 149 (search and seizure) and in special cases of a pre-trial investigation see Art. 1701 (Powers of the prosecutor to secure the confiscation of property) Lietuvos Respublikos baudžiamojo proceso kodeksas, the Lithuanian and Art. 170 para 5 CPC in pre-trial investigations.</p> <p>Art. 30 para 1 (c) Art. 154, 158 CPC</p> <p>Art. 30 para 1 (d) Art. 151 CPC in combination with ss. 72–75 CC of Lithuania</p>

		<p>Art. 30 para 1 (e) Art. 154 CPC</p> <p>Art. 30 para 1 (f) Art. 159 (covert investigation of-ficer) CPC, Art.160 Covert tracking</p>
<p>LU see <i>Art. 30</i> <i>EPPO</i> <i>Regula-</i> <i>tion in</i> <i>the CNP-</i> <i>Volume.</i></p>	<p>Code de procédure pénale</p>	<p>Art. 30 para 1 (a) Art. 33, 65 CPC: “(1) Searches are carried out in all places where ob-jects may be found, the discovery of which would be useful for establish-ing the truth.”</p> <p>Art. 30 para 1 (b) Art. 47, 31 para 2, 3, 33, 34, 35, 65, 66 para 1: “of all objects, documents, effects, data stored, processed or transmitted in an automated data processing or transmission system and other things referred to in Article 31 (3)”, 66 para 3 (entry into stored, processed and automated data) 67, 68, 67 (return/release of seized things), 194-1, 194-7 CPC</p> <p>Art. 30 para 1 (c) No special provision.</p> <p>Art. 30 para 1 (d) Loi du 22 juin 2022 sur la gestion et le recouvrement des avoirs saisis ou confisqués</p> <p>Art. 30 para 1 (e) Art. 65–67 (general information on interception of communications), es-pecially 67-1, 88, 88-1, 88-2 (special provisions on the interception of communications and technical means of surveillance) CPC and Art. 7 of the law of July 5, 2016 ((Nota bene: all of these provisions are under review as they become</p>

		<p>more and more outdated with the ongoing “cybercriminalité”) and see Art. 32, 33 Law of August 1, 2018 transposing Directive 2014/41/EU of the European Parliament and of the Council of April 3, 2014 on the European investigation order in criminal matters; 2° amendment of the Code of Criminal Procedure; 3° modification of the amended law of 8 August 2000 on international legal assistance in criminal matters.) Art. 30 para 1 (f)</p>
<p>LV see <i>Art. 30 EPPO Regulation in the CNP-Volume.</i></p>	<p>Kriminālprocesa likums</p>	<p>Art. 30 para 1 (a) ss. 159, 160 (inspection, which may lead to an investigation), 163 (inspection of other places, vehicles etc.); but mainly ss. 179–188 CPC will apply. S. 179. Searches, S. 180. Decision on a Search, S. 181. Persons Present at a Search, S. 182. Procedures for Conducting a Search, S. 183. Search of a Person, S. 184. Search in the Premises of Diplomatic or Consular Representative Offices, S. 185. Issuance of a Copy of the Minutes of a Search, S. 186. Removal, s. 188. Removal Procedures Art. 30 para 1 (b) ss. 361, S. 361.1 Sending for Execution of the Decision on the Seizure of a Property, 363, 364 CPC (issuing of copies of the protocol on a seizure) CPC Art. 30 para 1 (c) See in the CNP volume.</p>

		<p>Art. 30 para 1 (d) ss. 70 CC, ss. 124 CPC</p> <p>Art. 30 para 1 (e) Chapter 11 Special Investigative Actions, ss. 215 et seq. CPC but cf. especially ss. 218, 219</p> <p>Art. 30 para 1 (f) Chapter 11 Special Investigative Actions, ss. 217 et seq. CPC, S. 223. Surveillance and Tracking of a Person</p>
<p>MT see <i>Art. 30</i> <i>EPPO</i> <i>Regulation in the CNP-Volume.</i></p>	<p>SUBSIDIARY LEGISLATION 9.09CRIMINAL PROCEDURE (REGULATION OF REGISTRIES, ARCHIVES AND FUNCTIONS OF DIRECTOR GENERAL (COURTS) AND OTHER COURT EXECUTIVE OFFICERS) REGULATIONS</p>	<p>Art. 30 para 1 (a) see CNP volume Art. 30 para 1 (b) see CNP volume Art. 30 para 1 (c) see CNP volume Art. 30 para 1 (d) see CNP volume Art. 435B, C Criminal Code of Malta and see mainly CHAPTER 621 of the Laws of Malta: PROCEEDS OF CRIME ACT Art. 30 para 1 (e) see CNP volume Art. 30 para 1 (f) see CNP volume</p>
<p>PT see <i>Art. 30</i> <i>EPPO</i> <i>Regulation in the CNP-Volume.</i></p>	<p>Codigó de Procesal Pénal</p>	<p>Art. 30 para 1 (a) ss. 351, 354, 355K., 355L., 355P. ("when lawfully on a premise") ss. 351 para 2 in a flagrante delicto situation: "(2) For the purposes of sub-article (1), the Police may stop a person or a vehicle until the search is performed and shall seize anything discovered during the search and the possession of which is prohibited or which may be connected with an offence", s. 354 in a flagrante delicto situation: "354. Anything seized as a</p>

result of a search under the preceding articles of this title shall be preserved and the Police carrying out the search shall draw up a report stating all the particulars of the search and including a detailed list of the things so seized”.

And see the following ss. 355E, G (search of premises, which may lead to seizure of things on the premises e.g. s. 355 E (3)(b): “discovering and seizing any property in respect of which an alert has been entered in the Schengen Information System.”) in the real investigative phase.

Next see ss. 355AF (person) and 355AR. Criminal Code Cap. 9 Laws of Malta, Book 2 Laws Of Criminal Procedure Part I of the Authorities to which the Administration of Criminal Justice is entrusted, Title I Of the powers and duties of the Attorney General and the Executive Police in Respect of Criminal Prosecutions

Art. 30 para 1 (b)

s. 355P. (General rules of seizure.):
“355P. The Police, when lawfully on any premises, may seize anything which is on the premises if they have reasonable grounds for believing that it has been obtained in consequence of the commission of an offence or that it is evidence in relation to an offence or it is the subject of an alert in the Schengen Information System and that it is necessary to seize it to prevent it being concealed, lost, damaged, altered or destroyed.”

		<p>And see s. 355Q. (Computer data), and see s. 628B. para 1 (f) in mutual assistance cases (criminal law).</p> <p>Art. 30 para 1 (c) No special provision in the CPC; Art. 3 See Art. 4 Law No. 5/2002, of January 11 MEASURES TO FIGHT ORGANIZED CRIME.</p> <p>Art. 30 para 1 (d) See Art. 4 Law No. 5/2002, of January 11 MEASURES TO FIGHT ORGANIZED CRIME; Portuguese Securities Market Code.</p> <p>Art. 30 para 1 (e) see. ss. 628 para 1 (d) and the newly introduced s. 628E. Criminal Code Cap. 9 Laws of Malta, Book 2 Laws Of Criminal Procedure Part I of the Authorities to which the Administration of Criminal Justice is entrusted, Title I Of the powers and duties of the Attorney General and the Executive Police in Respect of Criminal Prosecutions. And last but not least see ss. 6, 7 Security Service Act, Chapter 391 of the Laws of Malta.</p> <p>Art. 30 para 1 (f)</p>
<p>RO³⁰⁴ <i>see Art. 30 EPPO Regulation in the CNP-Volume.</i></p>	<p>Codul de procedură penală al României</p>	<p>Art. 30 para 1 (a) Art. 156 CPC: “Common provisions (1) The search may be house, body, computer or vehicle search. (2) The search shall be carried out with respect for dignity, without constituting disproportionate interference with private life.”; 157 (home search), 159 (formalities), 161 (report), 165, 166 (body search related provisions) CPC, 167 CPC (vehicle</p>

³⁰⁴ See Jderu 2016, pp. 287–297.

search), 168 (computer search), 192 (on-the-spot search)

Art. 30 para 1 (b)

Art. 158 para 13 CPC, 168 para 10 CPC; 171 but cf. mainly s. 252, 252¹, 252² CPC

Art. 30 para 1 (c)

Article 138 §1 and §3 CPC (access to computer systems), Art. 152 para 1 CPC

Art. 30 para 1 (d)

Art. 270 CC; latest changes by Law no. 228/2020.

And see LAW no. 129 of July 11, 2019 for the prevention and combating of money laundering and the financing of terrorism, as well as for the amendment and completion of some normative acts

Art. 30 para 1 (e)

Art. 30 para 1 (f)

Art. 138 CPC

General dispositions

(1) The following are special methods of surveillance or research:

- a) interception of communications or any type of remote communication;
- b) access to a computer system;
- c) video, audio or photography surveillance;
- d) location or tracking by technical means;
- e) obtaining data on a person's financial transactions;
- f) detention, delivery or search of postal items;
- g) the use of undercover investigators and collaborators;

		<p>h) authorised participation in certain activities;</p> <p>i) supervised delivery;</p> <p>j) obtaining the traffic and location data processed by the providers of public electronic communications networks or the providers of electronic communications services intended for the public.; [...]</p> <p>- Article 148</p> <p>- Use of undercover or real-identity investigators and collaorators</p> <p>- Article 151 Controlled delivery</p>
<p>SI see <i>Art. 30 EPPO Regulation in the CNP- Volume.</i></p>	<p>Zakon o državnem tožilstvu (ZDT-1</p>	<p>Art. 30 para 1 (a) Art. 164 but see mainly Art. 214, 215, 216, 217, 218 CPC</p> <p>Art. 30 para 1 (b) Art. 148 but see mainly Art. 156 CPC; 220, 221, 222, 222a CPC</p> <p>Art. 30 para 1 (c)</p> <p>Art. 30 para 1 (d) Art. 502-502e CPC in combination with Art. 73 et seq. CC</p> <p>Art. 30 para 1 (e) Art. 150, 150a150b, 151 Zakon o kazenskem postopku, the Slovenian CPC</p> <p>Art. 30 para 1 (f) & para 4 Art. 149a para 1 (controlled delivery) CPC</p>
<p>SK see <i>Art. 30 EPPO Regulation in the CNP- Volume.</i></p>	<p>301, ZÁKON z 24. mája 2005 TRESTNÝ PORI- ADO</p>	<p>Art. 30 para 1 (a) ss. 99 et seq., 101, 102, 103, 104, 105 (Inspection and entry into the dwelling, other premises and land) CPC</p> <p>Art. 30 para 1 (b) s. 89 et seq. (Securing things important for criminal proceedings), ss.</p>

95 et seq. (Securing crime instruments and proceeds of crime)
Part Four – Seizure of Matters Important for Criminal Proceedings (s. 89 – s. 98a), S. 1 – Case relevant to criminal proceedings (s. 89), s. 89 – Matter important for criminal proceedings, S. Two – Seizure of Evidence (S.s 89a – 94): s. 89a – Obligation to issue a thing, s. 90 – Withdrawal of the case, s. 91 – Preservation, release and withdrawal of computer data, s. 92 – Acceptance of the seized thing, s. 93 – Common provisions, s. 94 – Custody of issued, confiscated, taken over or otherwise seized items, S. 3 – Seizure of criminal instruments and proceeds of crime (s. 95 – s. 98a): s. 95 – Securing funds, s. 95a, s. 95b, s. 96 – Securing book-entry securities, s. 96a – Securing real estate, s. 96b – Real estate inspection, s. 96c - Ensuring ownership interest in a legal entity, s. 96d – Securing virtual currency, s. 96e – Securing other property value, s. 96f – Securing a movable thing, s. 96g – Ensuring substitute value, Return of case (s. 97 – s. 98a), s. 97, s. 98, s. 98a – Common provisions for securing property, things and other property values

Art. 30 para 1 (c)

ss. 90, 116 §6, 118 CPC

Art. 30 para 1 (d)

The Law 101/2010 Coll. of March 4, 2010 on proving the origin of property applies; Art. 56–60 CC

		<p>Art. 30 para 1 (e) ss. 115–118 Zákon č. 301/2005 Z. z. Trestný poriadok, the Slovakian CPC</p> <p>Art. 30 para 1 (f) & para 4 s. 111 (Controlled delivery) s. 112 (Fake transfers) s. 113 (tracking and tracing people and things) s. 114 (video & audio recordings)</p>
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b) National Formalities and procedures expressly indicated by the handling European Delegated Prosecutor

On Italian territory the standards for formalities and procedures relating to investigative measures enshrined in the Italian CPC are quite high. **6**

The handling EDPs in the regional offices in Italy may indicate general provisions from the Italian Fundamental Law (*Costituzione*). **7**

The concrete formalities and procedures depend on the concerned investigation measures, which cannot be determined completely *in abstracto*. But the main principles can be listed: **8**

- Reasonable suspicion element
- Warrant obtainment
- Right to privacy
- Right to liberty
- Right to a fair investigation

Taking the investigation criminal financial conduct as an example it becomes obvious that the Italian CPC prescribes a lot of special formalities and procedures, which are obligatory in order not to endanger the criminal prosecution in general. **9**

4. Article 33 Pre-trial arrest and cross-border surrender

4. Article 33 Pre-trial arrest and cross-border surrender....	284	bb. Pre-trial detention (la detenzione preventiva dell'indagato o dell'imputato).....	297
a) General relation to national law: applicable Codes	284	c) Para 2: Cross-border surrender	316
b) Para 1: Provisions for arrest and pre-trial detention	284	d) Fraud-related peculiarities	318
aa. Arrest (<i>l'arresto</i>)	284		

1. The handling European Delegated Prosecutor may order or request the arrest or pre-trial detention of the suspect or accused person **in accordance with the national law applicable in similar domestic cases.**

2. Where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA.

a) General relation to national law: applicable Codes

1 See foremost Constitution (Art. 68); Art. 380 CPP.

b) Para 1: Provisions for arrest and pre-trial detention

aa. Arrest (*l'arresto*)

2	<p style="text-align: center;">Code of Criminal Procedure/<i>Codice di Procedura Penale</i> (CPP)</p> <p>Part One</p> <p>Book Four Precautionary Measures</p> <p>Article 294 Hearing of the Person Subject to a Personal Precautionary Measure</p> <p><i>Text applicable from 25 August 2026.</i></p> <p>1.³⁰⁵ Until the declaration opening the trial, the judge who decided on the application of the precautionary measure, if they have not proceeded pursuant to Article 291, paragraph 1-quarter, or during the hearing validating the arrest or detention of a suspect,</p>
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³⁰⁵ **Art. 294. Interrogatorio della persona sottoposta a misura cautelare personale**

Testo applicabile dal 25 agosto 2026

1. Fino alla dichiarazione di apertura del dibattimento, il giudice che ha deciso in ordine all'applicazione della misura cautelare se non vi ha proceduto ai sensi dell'articolo 291, comma 1-quarter, oppure nel corso dell'udienza di convalida dell'arresto o del fermo di indiziato di delitto procede all'interrogatorio della persona in stato di custodia cautelare in carcere immediatamente e comunque non oltre cinque giorni dall'inizio dell'esecuzione della custodia, salvo il caso in cui essa sia assolutamente impedita (3).

shall interrogate the person in preventive custody in prison immediately, and in any event no later than five days from the commencement of custody, except where it is absolutely prevented.

1-bis. If the person is subject to another precautionary measure, whether coercive or restrictive, the hearing must take place no later than ten days from the execution or notification of the measure. The judge, also *ex officio*, shall verify that the defendant in preventive custody in prison or under house arrest has been given the communication referred to in Article 293, paragraph 1, or has otherwise been informed pursuant to paragraph 1-bis of the same Article, and shall, if necessary, provide or complete the communication or information indicated therein.

1-ter. The hearing of the person in preventive custody must take place within forty-eight hours if the Public Prosecutor requests it in the preventive custody application.

2. In the case of absolute impediment, the judge shall record it in a reasoned decree, and the period for the hearing shall restart from the date on which the judge receives notice of the cessation of the impediment or otherwise verifies its cessation.

3. Through the hearing, the judge shall assess whether the conditions for applicability and the precautionary requirements referred to in Articles 273, 274, and 275 continue to exist. Where such conditions are met, the judge shall, in accordance with Article 299, revoke or replace the measure imposed.

1-bis. Se la persona è sottoposta ad altra misura cautelare, sia coercitiva che interdittiva, l'interrogatorio deve avvenire non oltre dieci giorni dalla esecuzione del provvedimento o dalla sua notificazione. Il giudice, anche *d'ufficio*, verifica che all'imputato in stato di custodia cautelare in carcere o agli arresti domiciliari sia stata data la comunicazione di cui all'articolo 293, comma 1, o che comunque sia stato informato ai sensi del comma 1-bis dello stesso articolo, e provvede, se del caso, a dare o a completare la comunicazione o l'informazione ivi indicate (4).

1-ter. L'interrogatorio della persona in stato di custodia cautelare deve avvenire entro il termine di quarantotto ore se il pubblico ministero ne fa istanza nella richiesta di custodia cautelare.

2. Nel caso di assoluto impedimento, il giudice ne dà atto con decreto motivato e il termine per l'interrogatorio decorre nuovamente dalla data in cui il giudice riceve comunicazione della cessazione dell'impedimento o comunque accerta la cessazione dello stesso.

3. Mediante l'interrogatorio il giudice valuta se permangono le condizioni di applicabilità e le esigenze cautelari previste dagli articoli 273, 274 e 275. Quando ne ricorrono le condizioni, provvede, a norma dell'articolo 299, alla revoca o alla sostituzione della misura disposta.

4. Ai fini di quanto previsto dal comma 3, l'interrogatorio è condotto dal giudice con le modalità indicate negli articoli 64 e 65. Al pubblico ministero e al difensore, che ha obbligo di intervenire, è dato tempestivo avviso del compimento dell'atto. Il giudice può autorizzare la persona sottoposta a misura cautelare e il difensore che ne facciano richiesta a partecipare a distanza all'interrogatorio (5).

4-bis. Quando la misura cautelare è stata disposta dal collegio di cui all'articolo 328, comma 1-quinquies, dalla Corte di Assise o dal tribunale, all'interrogatorio procede il presidente del collegio o uno dei componenti da lui delegato (9).

5. Per gli interrogatori da assumere nella circoscrizione di altro tribunale, il giudice o il presidente, nel caso di organo collegiale, qualora non ritenga di procedere personalmente e non sia possibile provvedere ai sensi del terzo periodo del comma 4, richiede il giudice per le indagini preliminari del luogo (7).

6. L'interrogatorio della persona in stato di custodia cautelare da parte del pubblico ministero non può precedere l'interrogatorio del giudice.

6-bis. Alla documentazione dell'interrogatorio si procede anche con mezzi di riproduzione audiovisiva o, se ciò non è possibile a causa della contingente indisponibilità di mezzi di riproduzione audiovisiva o di personale tecnico, con mezzi di riproduzione fonografica. È fatta salva l'applicazione dell'articolo 133-ter, comma 3, terzo periodo, nei casi in cui è autorizzata la partecipazione a distanza all'interrogatorio (8).

4. For the purposes of paragraph 3, the hearing shall be conducted by the judge in accordance with the procedures set out in Articles 64 and 65. The Public Prosecutor and the defence counsel, who is obliged to attend, shall be given timely notice of the act. The judge may authorise the person subject to a precautionary measure and the defence counsel, upon request, to participate in the hearing remotely.

4-bis. Where the precautionary measure has been imposed by the panel referred to in Article 328, paragraph 1-quinquies, by the Court of Assizes, or by the tribunal, the hearing shall be conducted by the president of the panel or by one of its members delegated by them.

5. For hearings to be conducted within the jurisdiction of another court, the judge, or the presiding judge in the case of a collegiate body, if they do not consider it appropriate to proceed personally and it is not possible to proceed pursuant to the third sentence of paragraph 4, shall request the judge for preliminary investigations of that location.

6. The hearing of the person in preventive custody by the Public Prosecutor may not precede the hearing by the judge.

6-bis. The documentation of the hearing shall also be carried out by audiovisual means or, if this is not possible due to the contingent unavailability of audiovisual equipment or technical personnel, by phonographic means. The application of Article 133-ter, paragraph 3, third sentence, is without prejudice in cases where remote participation in the hearing is authorised.

3 Second Part/Fifth Book Preliminary Investigations And Preliminary Hearing

TITLE VI Arrest in flagrante delicto and arrest

Article 380 Obligatory arrest in flagrante delicto

1.³⁰⁶ The officers and agents of the judicial police proceed to the arrest of anyone caught in the act [382] of an intentional or attempted crime for which the law establishes the

³⁰⁶ **Art. 380. Arresto obbligatorio in flagranza.**

1. Gli ufficiali e gli agenti di polizia giudiziaria procedono all'arresto di chiunque è colto in flagranza [382] di un delitto non colposo consumato o tentato per il quale la legge stabilisce la pena dell'ergastolo o della reclusione non inferiore nel minimo a cinque anni e nel massimo a venti anni.

2. Anche fuori dei casi previsti dal comma 1, gli ufficiali e gli agenti di polizia giudiziaria procedono all'arresto di chiunque è colto in flagranza di uno dei seguenti delitti non colposi, consumati o tentati:

a) delitti contro la personalità dello Stato previsti nel titolo I del libro II del Codice Penale per i quali è stabilita la pena della reclusione non inferiore nel minimo a cinque anni o nel massimo a dieci anni;

a-bis) delitto di violenza o minaccia ad un Corpo politico, amministrativo o giudiziario o ai suoi singoli componenti previsto dall'articolo 338 del codice penale(1);

b) delitto di devastazione e saccheggio previsto dall'articolo 419 del codice penale;

c) delitti contro l'incolumità pubblica previsti nel titolo VI del libro II del codice penale per i quali è stabilita la pena della reclusione non inferiore nel minimo a tre anni o nel massimo a dieci anni;

d) delitto di riduzione in schiavitù previsto dall'articolo 600, delitto di prostituzione minorile previsto dall'articolo 600 bis, primo comma, delitto di pornografia minorile previsto dall'articolo 600 ter, commi primo e secondo,

penalty of life imprisonment or imprisonment of no less than a minimum of five years and a maximum of twenty years.

anche se relativo al materiale pornografico di cui all'articolo 600 quater 1, e delitto di iniziative turistiche volte allo sfruttamento della prostituzione minorile previsto dall'articolo 600 quinquies del codice penale(2);

d.1) delitti di intermediazione illecita e sfruttamento del lavoro previsti dall'articolo 603 bis, secondo comma, del codice penale(3);

d-bis) delitto di violenza sessuale previsto dall'articolo 609 bis, escluso il caso previsto dal terzo comma, e delitto di violenza sessuale di gruppo previsto dall'articolo 609 octies del codice penale(4);

d-ter) delitto di atti sessuali con minorenne di cui all'articolo 609 quater, primo e secondo comma, del codice penale(5);

e) delitto di furto quando ricorre la circostanza aggravante prevista dall'articolo 4 della legge 8 agosto 1977, n. 533, o taluna delle circostanze aggravanti previste dall'articolo 625, primo comma, numeri 2), prima ipotesi, 3) e 5), nonché 7 bis) del codice penale, salvo che ricorra, in questi ultimi casi, la circostanza attenuante di cui all'articolo 62, primo comma, numero 4), del codice penale(6);

e-bis) delitti di furto previsti dall'articolo 624 bis del codice penale, salvo che ricorra la circostanza attenuante di cui all'articolo 62, primo comma, numero 4), del codice penale(7);

f) delitto di rapina previsto dall'articolo 628 del codice penale e di estorsione previsto dall'articolo 629 del codice penale;

f-bis) delitto di ricettazione, nell'ipotesi aggravata di cui all'articolo 648, primo comma, secondo periodo, del codice penale(8);

g) delitti di illegale fabbricazione, introduzione nello Stato, messa in vendita, cessione, detenzione e porto in luogo pubblico o aperto al pubblico di armi da guerra o tipo guerra o parti di esse, di esplosivi, di armi clandestine, nonché di più armi comuni da sparo, escluse quelle previste dall'articolo 2, comma terzo, della legge 18 aprile 1975, n. 110;

h) delitti concernenti sostanze stupefacenti o psicotrope puniti a norma dell'articolo 73 del Testo unico stupefacenti approvato con decreto del Presidente della Repubblica 9 ottobre 1990, n. 309, salvo che per i delitti di cui al comma 5 del medesimo articolo(9);

i) delitti commessi per finalità di terrorismo o di eversione dell'ordine costituzionale per i quali la legge stabilisce la pena della reclusione non inferiore nel minimo a cinque anni o nel massimo a dieci anni;

l) delitti di promozione, costituzione, direzione e organizzazione delle associazioni segrete previste dall'articolo 1 della legge 25 gennaio 1982 n. 17, [della associazione di tipo mafioso prevista dall'articolo 416 bis comma 2 del codice penale,] delle associazioni di carattere militare previste dall'articolo 1 della legge 17 aprile 1956 n. 561, delle associazioni, dei movimenti o dei gruppi previsti dagli articoli 1 e 2 della legge 20 giugno 1952, n. 645, delle organizzazioni, associazioni, movimenti o gruppi di cui all'articolo 3 comma 3, della legge 13 ottobre 1975, n. 654;

l-bis) delitti di partecipazione, promozione, direzione ed organizzazione della associazione di tipo mafioso prevista dall'articolo 416 bis del codice penale;

l-ter) delitti di maltrattamenti contro familiari e conviventi e di atti persecutori, previsti dall'articolo 572 e dall'articolo 612 bis del codice penale(10);

m) delitti di promozione, direzione, costituzione e organizzazione della associazione per delinquere prevista dall'articolo 416 commi 1 e 3 del codice penale, se l'associazione è diretta alla commissione di più delitti fra quelli previsti dal comma 1 o dalle lettere a), b), c), d), f), g), i) del presente comma;

m-bis) delitti di fabbricazione, detenzione o uso di documento di identificazione falso previsti dall'articolo 497 bis del codice penale(11);

m-ter) delitti di promozione, direzione, organizzazione, finanziamento o effettuazione di trasporto di persone ai fini dell'ingresso illegale nel territorio dello Stato, di cui all'articolo 12, commi 1 e 3, del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286, e successive modificazioni(11);

m-quater) delitto di omicidio colposo stradale previsto dall'articolo 589 bis, secondo e terzo comma, del codice penale(11);

m-quinquies) delitto di resistenza o di violenza contro una nave da guerra, previsto dall'articolo 1100 del codice della navigazione(12).

3. Se si tratta di delitto perseguibile a querela [336-340], l'arresto in flagranza è eseguito se la querela viene proposta, anche con dichiarazione resa oralmente all'ufficiale o all'agente di polizia giudiziaria presente nel luogo. Se l'avente diritto dichiara di rimettere la querela, l'arrestato è posto immediatamente in libertà.

2. Even outside the cases provided for in paragraph 1, the officers and agents of the judicial police proceed with the arrest of anyone caught in the act of one of the following culpable, committed or attempted crimes:
- a) crimes against the personality of the State provided for in Title I of Book II of the Criminal Code for which the penalty of imprisonment of not less than five years or a maximum of ten years is established;
 - a-bis) crime of violence or threat to a political, administrative or judicial body or to its individual components provided for by article 338 of the criminal code (1);
 - b) the crime of devastation and pillage provided for by article 419 of the penal code;
 - c) crimes against public safety provided for in Title VI of Book II of the Penal Code for which a prison sentence of no less than three years or a maximum of ten years is established;
 - d) crime of reduction into slavery provided for in article 600, crime of child prostitution provided for in article 600 bis, first paragraph, crime of child pornography provided for in article 600 ter, first and second paragraphs, even if relating to pornographic material of referred to in article 600 quater 1, and the crime of tourist initiatives aimed at the exploitation of child prostitution envisaged by article 600 quinquies of the criminal code (2);
 - d.1) crimes of illicit intermediation and exploitation of labor provided for by article 603 bis, second paragraph, of the criminal code (3);
 - d-bis) the crime of sexual violence envisaged by article 609 bis, excluding the case envisaged by the third paragraph, and the crime of group sexual violence envisaged by article 609 octies of the criminal code (4);
 - d-ter) crime of sexual acts with a minor referred to in article 609 quater, first and second paragraphs, of the criminal code (5);
 - e) crime of theft when the aggravating circumstance provided for by article 4 of law no. 533, or any of the aggravating circumstances provided for by article 625, first paragraph, numbers 2), first hypothesis, 3) and 5), as well as 7 bis) of the criminal code, unless, in the latter cases, the extenuating circumstance of referred to in article 62, first paragraph, number 4), of the criminal code (6);
 - e-bis) crimes of theft provided for by article 624 bis of the criminal code, unless the extenuating circumstance referred to in article 62, first paragraph, number 4), of the criminal code occurs (7);
 - f) the crime of robbery provided for in article 628 of the criminal code and of extortion provided for in article 629 of the criminal code;
 - f-bis) the crime of receiving stolen goods, in the aggravated case referred to in article 648, first paragraph, second sentence, of the criminal code (8);
 - g) crimes of illegal manufacture, introduction into the State, sale, transfer, possession and carrying in a public place or place open to the public of war or war-like weapons or

parts thereof, explosives, clandestine weapons, as well as more weapons common guns, excluding those provided for by article 2, third paragraph, of law no. 110;

h) crimes concerning narcotic or psychotropic substances punished in accordance with article 73 of the Consolidated Law on narcotics approved by decree of the President of the Republic of 9 October 1990, no. 309, except for the crimes referred to in paragraph 5 of the same article (9);

i) crimes committed for the purpose of terrorism or subversion of the constitutional order for which the law establishes the penalty of imprisonment of not less than a minimum of five years or a maximum of ten years;

l) crimes of promotion, constitution, management and organization of secret associations provided for by article 1 of law no. 17, [of the mafia-type association envisaged by article 416 bis paragraph 2 of the criminal code,] of the military associations envisaged by article 1 of law no. 561, of the associations, movements or groups provided for by articles 1 and 2 of the law of 20 June 1952, n. 645, of the organizations, associations, movements or groups referred to in article 3 paragraph 3, of the law 13 October 1975, n. 654;

l-bis) crimes of participation, promotion, management and organization of the mafia-type association provided for by article 416 bis of the criminal code;

l-ter) crimes of ill – treatment against family members and cohabitants and of persecutory acts, provided for by article 572 and article 612 bis of the criminal code (10);

m) crimes of promotion, management, constitution and organization of the criminal association provided for by article 416 paragraphs 1 and 3 of the criminal code, if the association is aimed at the commission of more than one of the crimes provided for by paragraph 1 or letters a), b), c), d), f), g), i) of this paragraph;

m-bis) crimes involving the manufacture, possession or use of a false identification document pursuant to article 497 bis of the criminal code (11);

m-ter) crimes of promotion, management, organization, financing or carrying out the transport of persons for the purposes of illegal entry into the territory of the State, referred to in Article 12, paragraphs 1 and 3, of the consolidated text of the provisions concerning the discipline of immigration and rules on the condition of the foreigner, as per Legislative Decree 25 July 1998, n. 286, and subsequent amendments (11);

m-quater) the crime of manslaughter on the road provided for by article 589 bis, second and third paragraphs, of the criminal code (11);

m-quinqies) crime of resistance or violence against a warship, provided for by article 1100 of the navigation code (12).

3. In the case of a crime punishable on complaint [336– 340], the arrest in flagrante delicto is carried out if the complaint is proposed, even with a statement made orally to the officer or to the judicial police officer present in the place. If the person entitled declares to remit the complaint, the arrested person is immediately released.

Article 381 Facultative arrest in flagrante delicto³⁰⁷

1. Officers and judicial police officers have the power to arrest anyone caught in the act of a non-culpable, committed or attempted crime, for which the law establishes the penalty of imprisonment exceeding a maximum of three years or a culpable crime [43 of the criminal code] for which the law establishes the penalty of imprisonment of not less than a maximum of five years.
2. Officers and judicial police officers also have the power to arrest anyone caught in the act of one of the following crimes:
 - a) embezzlement by profit from the error of others provided for by article 316 of the criminal code;
 - b) corruption for an act contrary to official duties provided for by articles 319 paragraph 4 and 321 of the criminal code;

³⁰⁷ **Art. 381. Arresto facoltativo in flagranza.**

1. Gli ufficiali e gli agenti di polizia giudiziaria hanno facoltà di arrestare chiunque è colto in flagranza di un delitto non colposo, consumato o tentato, per il quale la legge stabilisce la pena della reclusione superiore nel massimo a tre anni ovvero di un delitto colposo [43 c.p.] per il quale la legge stabilisce la pena della reclusione non inferiore nel massimo a cinque anni.
2. Gli ufficiali e gli agenti di polizia giudiziaria hanno altresì facoltà di arrestare chiunque è colto in flagranza di uno dei seguenti delitti:
 - a) peculato mediante profitto dell'errore altrui previsto dall'articolo 316 del codice penale;
 - b) corruzione per un atto contrario ai doveri d'ufficio prevista dagli articoli 319 comma 4 e 321 del codice penale;
 - c) violenza o minaccia a un pubblico ufficiale prevista dall'articolo 336 comma 2 del codice penale;
 - d) commercio e somministrazione di medicinali guasti e di sostanze alimentari nocive previsti dagli articoli 443 e 444 del codice penale;
 - e) corruzione di minorenni prevista dall'articolo 530 del codice penale;
 - f) lesione personale prevista dall'articolo 582 del codice penale;
 - f-bis) violazione di domicilio prevista dall'Art. 614, primo e secondo comma, del codice penale(1);
 - g) furto previsto dall'articolo 624 del codice penale;
 - h) danneggiamento aggravato a norma dell'articolo 635 comma 2 del codice penale;
 - i) truffa prevista dall'articolo 640 del codice penale;
 - l) appropriazione indebita prevista dall'articolo 646 del codice penale;
 - l-bis) offerta, cessione o detenzione di materiale pornografico previste dagli articoli 600 ter, quarto comma, e 600 quater del codice penale, anche se relative al materiale pornografico di cui all'articolo 600 quater 1 del medesimo codice(2);
 - m) alterazione di armi e fabbricazione di esplosivi non riconosciuti previste dagli articoli 3 e 24 comma 1 della legge 18 aprile 1975 n. 110;
 - [m-bis) fabbricazione, detenzione o uso di documento di identificazione falso previsti dall'articolo 497 bis del codice penale;](3)(4)
 - m-ter) falsa attestazione o dichiarazione a un pubblico ufficiale sulla identità o su qualità personali proprie o di altri, prevista dall'articolo 495 del codice penale(5);
 - m-quater) fraudolente alterazioni per impedire l'identificazione o l'accertamento di qualità personali, previste dall'articolo 495 ter del codice penale(5);
 - m-quinquies) delitto di lesioni colpose stradali gravi o gravissime previsto dall'articolo 590 bis, secondo, terzo, quarto e quinto comma, del codice penale(6).
3. Se si tratta di delitto perseguibile a querela [336-340], l'arresto in flagranza può essere eseguito se la querela viene proposta, anche con dichiarazione resa oralmente all'ufficiale o all'agente di polizia giudiziaria presente nel luogo. Se l'avente diritto dichiara di rimettere la querela, l'arrestato è posto immediatamente in libertà.
4. Nelle ipotesi previste dal presente articolo si procede all'arresto in flagranza soltanto se la misura è giustificata dalla gravità del fatto ovvero dalla pericolosità del soggetto desunta dalla sua personalità [133 c.p.] o dalle circostanze del fatto.
- 4-bis. Non è consentito l'arresto della persona richiesta di fornire informazioni dalla polizia giudiziaria o dal pubblico ministero per reati concernenti il contenuto delle informazioni o il rifiuto di fornirle.

- c) violence or threats to a public official provided for by article 336 paragraph 2 of the criminal code;
 - d) trade and administration of broken medicines and harmful food substances provided for in articles 443 and 444 of the criminal code;
 - e) corruption of minors provided for by article 530 of the criminal code;
 - f) personal injury provided for by article 582 of the criminal code;
 - f-bis) violation of domicile provided for by Art. 614, first and second paragraph, of the penal code (1);
 - g) theft provided for by article 624 of the criminal code;
 - h) aggravated damage pursuant to article 635 paragraph 2 of the criminal code;
 - i) fraud provided for by article 640 of the criminal code;
 - [j–k]
 - l) embezzlement provided for by article 646 of the criminal code;
 - l-bis) offer, transfer or possession of pornographic material provided for in articles 600 ter, fourth paragraph, and 600 quater of the criminal code, even if relating to pornographic material referred to in article 600 quater 1 of the same code (2);
 - m) alteration of weapons and manufacture of unrecognized explosives provided for in articles 3 and 24 paragraph 1 of law no. 110;
 - [m-bis) manufacture, possession or use of a false identification document pursuant to article 497 bis of the criminal code;] (3) (4)
 - m-ter) false attestation or declaration to a public official on the identity or personal qualities of one's own or others, provided for by article 495 of the criminal code (5);
 - m-quater) fraudulent alterations to prevent the identification or ascertainment of personal qualities, provided for by article 495 ter of the criminal code (5);
 - m-quinquies) crime of serious or very serious culpable road injury provided for by article 590 bis, second, third, fourth and fifth paragraphs, of the criminal code (6).
3. In the case of a crime punishable by complaint [336– 340], the arrest in flagrante delicto can be carried out if the complaint is proposed, even with a statement made orally to the officer or to the judicial police agent present in the place. If the person entitled declares to remit the complaint, the arrested person is immediately released.
4. In the cases provided for in this article, arrest in flagrante delicto is carried out only if the measure is justified by the gravity of the fact or by the danger of the subject inferred from his personality [133 cp] or from the circumstances of the fact.
- 4-bis. The arrest of the person requested to provide information by the judicial police or the public prosecutor for crimes concerning the content of the information or refusal to provide it is not allowed.

Article 382³⁰⁸ State of flagrancy

1. Whoever is caught in the act of committing the crime or who, immediately after the crime, is chased by the judicial police, the offended person or other people or is surprised with things or traces from which it appears that he has committed the offense immediately before, is in state of flagrancy.
2. In permanent offenses the state of flagrancy lasts until the permanence has ceased.

Article 383³⁰⁹ Arrest by private individuals

1. In the cases provided for in Article 380, each person is authorised to proceed with arrest in flagrante delicto, in the case of crimes that can be prosecuted ex officio.
2. The person who carried out the arrest must without delay hand over the person arrested and the things constituting the body of the crime to the judicial police which draws up the report of the handover and issues a copy.

Article 384³¹⁰ Arrest of suspect of crime

1. Even outside the cases of flagrante delicto, when there are specific elements which, also in relation to the impossibility of identifying the suspect, (1) make the danger of escape to be considered well founded, the public prosecutor orders the arrest of the person seriously suspected of a crime for which the law establishes the penalty of life imprisonment or imprisonment of not less than a minimum of two years and a max-

³⁰⁸ **Art. 382. Stato di flagranza.**

1. E' in stato di flagranza chi viene colto nell'atto di commettere il reato ovvero chi, subito dopo il reato, è inseguito dalla polizia giudiziaria, dalla persona offesa o da altre persone ovvero è sorpreso con cose o tracce dalle quali appaia che egli abbia commesso il reato immediatamente prima.

2. Nel reato permanente lo stato di flagranza dura fino a quando non è cessata la permanenza.

³⁰⁹ **Art. 383. Facoltà di arresto da parte dei privati.**

1. Nei casi previsti dall'articolo 380 ogni persona è autorizzata a procedere all'arresto in flagranza, quando si tratta di delitti perseguibili di ufficio.

2. La persona che ha eseguito l'arresto deve senza ritardo consegnare l'arrestato e le cose costituenti il corpo del reato alla polizia giudiziaria la quale redige il verbale della consegna e ne rilascia copia.

³¹⁰ **Art. 384. Fermo di indiziato di delitto.**

1. Anche fuori dei casi di flagranza, quando sussistono specifici elementi che, anche in relazione alla impossibilità di identificare l'indiziato, (1) fanno ritenere fondato il pericolo di fuga, il pubblico ministero dispone il fermo della persona gravemente indiziata di un delitto per il quale la legge stabilisce la pena dell'ergastolo o della reclusione non inferiore nel minimo a due anni e superiore nel massimo a sei anni ovvero di un delitto concernente le armi da guerra e gli esplosivi o di un delitto commesso per finalità di terrorismo, anche internazionale, o di eversione dell'ordine democratico. (2)

2. Nei casi previsti dal comma 1 e prima che il pubblico ministero abbia assunto la direzione delle indagini, gli ufficiali e gli agenti di polizia giudiziaria procedono al fermo di propria iniziativa.

3. La polizia giudiziaria procede inoltre al fermo di propria iniziativa qualora sia successivamente individuato l'indiziato ovvero sopravvengono specifici elementi, quali il possesso di documenti falsi, che rendano fondato il pericolo che l'indiziato sia per darsi alla fuga (3) e non sia possibile, per la situazione di urgenza, attendere il provvedimento del pubblico ministero.

imum of six years or a crime relating to weapons of war and explosives or a crime committed for the purpose of terrorism, also international, or subversion of the democratic order. (2)

2. In the cases provided for in paragraph 1 and before the public prosecutor has taken over the direction of the investigations, the officers and agents of the judicial police proceed to arrest on their own initiative.

3. The judicial police also proceed to arrest on their own initiative if the suspect is subsequently identified or specific elements arise, such as the possession of false documents, which justify the danger that the suspect is about to flee (3) and not it is possible, for the urgent situation, to wait for the decision of the public prosecutor.

Article 385 Prohibition of arrest or detention in certain circumstances³¹¹

1. Arrest or detention is not permitted when, taking into account the circumstances of the fact, it appears that this was done in the fulfilment of a duty or in the exercise of a legitimate right or in the presence of a cause of non-punishment.

Facultative arrest enshrined in Art. 381 is possible as **judicial police may arrest** in *flagrante delicto* for non-culpable crimes punishable with below 3 years, or culpable crimes with max 5 years; and this includes specific offenses like embezzlement (Arts. 316, 646 CP), corruption, personal injury (Art. 582 CP), fraud (Art. 640 CP), violation of domicile, serious road injuries (Art. 590-bis CP), certain weapons and false identity crimes. **4**

The arrest provisions are conditional on gravity or risk of the offender (Art. 133 CP). **5**

In the **state of flagrancy** (Art. 382) a person is in *flagrante delicto* if caught committing, immediately chased after the act, or found with traces or items linking to the crime; in permanent crimes, flagrancy continues while the act persists. **6**

Arrest by private individuals (Art. 383) is possible as any private person may arrest *in flagrante delicto* for *ex officio* crimes under Art. 380, handing over the suspect and crime objects immediately to the judicial police. **7**

³¹¹ **Art. 385. Divieto di arresto o di fermo in determinate circostanze.**

1. L'arresto o il fermo non è consentito quando, tenuto conto delle circostanze del fatto, appare che questo è stato compiuto nell'adempimento di un dovere o nell'esercizio di una facoltà legittima ovvero in presenza di una causa di non punibilità.

Article 386 Duties of the judicial police in the event of arrest or detention

See above → Article 27 Right of , Urgent measures of national authorities for securing an investigation and prosecution.

Article 387³¹² Notice of arrest or detention to family members

1. The judicial police, with the consent of the person arrested or detained, must without delay inform the family members of the arrest or detention.

[Article 387– bis] [...]

Article 388³¹³ Interrogation of the arrested detained person

1. The public prosecutor may carry out the questioning of the arrested or detained person, promptly giving notice to the trusted defender or, failing that, to the official defender.

2. During the interrogation, observing the forms provided for by article 64, the public prosecutor informs the arrested or detained person of the fact for which the procedure is being carried out and of the reasons that led to the provision, also communicating the elements against him and, if this cannot be prejudicial to the investigations, the sources.

Article 389³¹⁴ Cases of immediate release of the person arrested or detained

1. If it is evident that the arrest or detention was carried out by mistake in person or outside the cases provided for by law or if the measure of the arrest or detention has become ineffective pursuant to articles 386 paragraph 7 and 390 paragraph 3, the public prosecutor orders with a reasoned decree that the person arrested or detained is immediately released.

2. The release is also ordered before the intervention of the public prosecutor by the same judicial police officer, who immediately informs the public prosecutor of the place where the arrest or detention was carried out.

³¹² **Art. 387. Avviso dell'arresto o del fermo ai familiari.**

1. La polizia giudiziaria, con il consenso dell'arrestato o del fermato, deve senza ritardo dare notizia ai familiari dell'avvenuto arresto o fermo.

³¹³ **Art. 388. Interrogatorio dell'arrestato o del fermato.**

1. Il pubblico ministero può procedere all'interrogatorio dell'arrestato o del fermato, dandone tempestivo avviso al difensore di fiducia ovvero, in mancanza, al difensore di ufficio.

2. Durante l'interrogatorio, osservate le forme previste dall'articolo 64, il pubblico ministero informa l'arrestato o il fermato del fatto per cui si procede e delle ragioni che hanno determinato il provvedimento comunicandogli inoltre gli elementi a suo carico e, se non può derivarne pregiudizio per le indagini, le fonti.

³¹⁴ **Art. 389. Casi di immediata liberazione dell'arrestato o del fermato.**

1. Se risulta evidente che l'arresto o il fermo è stato eseguito per errore di persona o fuori dei casi previsti dalla legge o se la misura dell'arresto o del fermo è divenuta inefficace a norma degli articoli 386 comma 7 e 390 comma 3, il pubblico ministero dispone con decreto motivato che l'arrestato o il fermato sia posto immediatamente in libertà.

2. La liberazione è altresì disposta prima dell'intervento del pubblico ministero dallo stesso ufficiale di polizia giudiziaria, che ne informa subito il pubblico ministero del luogo dove l'arresto o il fermo è stato eseguito.

Cf. above for the text of **Artt. 390 Request for validation of arrest or detention, 391 Validation hearing** [below subheading Art. 26 Judicial appeals].

Related provisions from the Anti-Mafia-Code³¹⁵

Article 4³¹⁶

1. The provisions set out in this chapter apply [to]:

- a) the suspects belonging to the associations referred to in article 416 bis of the Italian Criminal Code;
- b) to persons suspected of one of the crimes provided for by article 51, paragraph 3 bis, of the Code of Criminal Procedure or of the crime referred to in article 12 quinquies, paragraph 1, of decree-law no. 306, converted, with modifications, by the law 7 August 1992, n. 356, or the crime referred to in article 418 of the penal code;
- c) to the subjects referred to in Article 1 (1);

³¹⁵ **Codice antimafia.**

³¹⁶ **Art. 4. Codice antimafia.**

1. I provvedimenti previsti dal presente capo si applicano:

- a) agli indiziati di appartenere alle associazioni di cui all'articolo 416 bis c.p.;
- b) ai soggetti indiziati di uno dei reati previsti dall'articolo 51, comma 3 bis, del codice di procedura penale ovvero del delitto di cui all'articolo 12 quinquies, comma 1, del decreto-legge 8 giugno 1992, n. 306, convertito, con modificazioni, dalla legge 7 agosto 1992, n. 356, o del delitto di cui all'articolo 418 del codice penale;
- c) ai soggetti di cui all'articolo 1(1);
- d) agli indiziati di uno dei reati previsti dall'articolo 51, comma 3 quater, del codice di procedura penale e a coloro che, operanti in gruppi o isolatamente, pongano in essere atti preparatori, obiettivamente rilevanti, ovvero esecutivi diretti a sovvertire l'ordinamento dello Stato, con la commissione di uno dei reati previsti dal capo I del titolo VI del libro II del codice penale o dagli articoli 284, 285, 286, 306, 438, 439, 605 e 630 dello stesso codice, nonché alla commissione dei reati con finalità di terrorismo anche internazionale ovvero a prendere parte ad un conflitto in territorio estero a sostegno di un'organizzazione che persegue le finalità terroristiche di cui all'articolo 270 sexies del codice penale;
- e) a coloro che abbiano fatto parte di associazioni politiche disciolte ai sensi della legge 20 giugno 1952, n. 645, e nei confronti dei quali debba ritenersi, per il comportamento successivo, che continuino a svolgere una attività analoga a quella precedente;
- f) a coloro che compiano atti preparatori, obiettivamente rilevanti, ovvero esecutivi diretti alla ricostituzione del partito fascista ai sensi dell'articolo 1 della legge n. 645 del 1952, in particolare con l'esaltazione o la pratica della violenza;
- g) fuori dei casi indicati nelle lettere d), e) ed f), siano stati condannati per uno dei delitti previsti nella legge 2 ottobre 1967, n. 895, e negli articoli 8 e seguenti della legge 14 ottobre 1974, n. 497, e successive modificazioni, quando debba ritenersi, per il loro comportamento successivo, che siano proclivi a commettere un reato della stessa specie col fine indicato alla lettera d);
- h) agli istigatori, ai mandanti e ai finanziatori dei reati indicati nelle lettere precedenti. È finanziatore colui il quale fornisce somme di denaro o altri beni, conoscendo lo scopo cui sono destinati;
- i) alle persone indiziate di avere agevolato gruppi o persone che hanno preso parte attiva, in più occasioni, alle manifestazioni di violenza di cui all'articolo 6 della legge 13 dicembre 1989, n. 401, nonché alle persone che, per il loro comportamento, debba ritenersi, anche sulla base della partecipazione in più occasioni alle medesime manifestazioni, ovvero della reiterata applicazione nei loro confronti del divieto previsto dallo stesso articolo, che sono dediti alla commissione di reati che mettono in pericolo l'ordine e la sicurezza pubblica, ovvero l'incolumità delle persone in occasione o a causa dello svolgimento di manifestazioni sportive;
- i-bis) ai soggetti indiziati del delitto di cui all'articolo 640 bis o del delitto di cui all'articolo 416 del codice penale, finalizzato alla commissione di taluno dei delitti di cui agli articoli 314, primo comma, 316, 316 bis, 316 ter, 317, 318, 319, 319 ter, 319 quater, 320, 321, 322 e 322 bis del medesimo codice;
- i-ter) ai soggetti indiziati dei delitti di cui agli articoli 572 e 612 bis del Codice Penale.

- d) to those suspected of one of the offenses provided for by article 51, paragraph 3 quarter, of the Code of Criminal Procedure and to those who, operating in groups or individually, carry out preparatory, objectively relevant, or executive acts aimed at subverting the legal system of the State, with the commission of one of the offenses provided for in Chapter I of Title VI of Book II of the Penal Code or in Articles 284, 285, 286, 306, 438, 439, 605 and 630 of the same code, as well as the commission of crimes for terrorist purposes, including international ones, or to take part in a conflict in foreign territory in support of an organization that pursues the terrorist purposes referred to in article 270 sexies of the criminal code;
- e) to those who have been part of political associations dissolved under the law of 20 June 1952, n. 645, and in respect of which it must be considered, for the subsequent behavior, that they continue to carry out an activity similar to the previous one;
- f) to those who carry out preparatory, objectively relevant, or executive acts aimed at the reconstitution of the fascist party pursuant to article 1 of law no. 645 of 1952, in particular with the exaltation or the practice of violence;
- g) except for the cases indicated in letters d), e) and f), they have been sentenced for one of the crimes provided for in law no. 895, and in articles 8 and following of the law 14 October 1974, n. 497, and subsequent amendments, when it is to be considered, due to their subsequent behavior, that they are inclined to commit a crime of the same kind with the purpose indicated in letter d);
- h) the instigators, principals and financiers of the crimes indicated in the previous letters. A lender is someone who provides sums of money or other goods, knowing the purpose for which they are intended;
- i) to persons suspected of having facilitated groups or persons who took an active part, on several occasions, in the manifestations of violence referred to in article 6 of the law of 13 December 1989, n. 401, as well as to persons who, for their behavior, must be considered, also on the basis of participation on several occasions in the same events, or of the repeated application to them of the prohibition provided for by the same article, who are committed to the commission of crimes public order and safety are endangered, or the safety of people during or due to the carrying out of sporting events;
- i-bis) to persons suspected of the crime referred to in article 640 bis or the crime referred to in article 416 of the criminal code, aimed at the commission of any of the crimes referred to in articles 314, first paragraph, 316, 316 bis, 316 ter, 317, 318, 319, 319 ter, 319 quater, 320, 321, 322 and 322 bis of the same code;
- i-ter) to persons suspected of the crimes referred to in articles 572 and 612 bis of the Criminal Code.

Article 77³¹⁷

1. Against the subjects referred to in Article 4 and those who are seriously suspected of a crime committed on the occasion or due to sporting events, the arrest of a suspect is allowed even outside the limits referred to in Article 384 of the Code of Criminal Procedure, provided that it is a crime for which optional arrest in flagrante delicto is permitted pursuant to article 381 of the same code (1).

bb. Pre-trial detention (la detenzione preventiva dell'indagato o dell'imputato)

If we take a quick glance at **real EPPO cases** that applied pre-trial in the past two years the relevance of Art. 33 para 1 EPPO Regulation becomes more vivid. In the **Bologna EPPO “Stop the Carousel” investigation** (June 2024), multiple suspects were placed in pre-trial detention following allegations of being part of a criminal network that evaded VAT payments on €63 million of textile imports causing a VAT loss over €13M. Judges found flight risk and risk of evidence destruction justified custody.³¹⁸ In the **Venice case** (April 2024), 22 suspects were arrested and 8 detained in custody (and 14 under house arrest) in a massive scheme involving misappropriation of recovery funds. The EDP requested Italian judicial arrest orders in line with Art. 33 para 1 EPPO Reg. and Italian CPP rule.³¹⁹ As a **checklist for any EDP** we can draw a list from the collected provisions, which we present below to quickly navigate and read the law:

1. Identify PIF offence under EPPO material competence (fraud, VAT fraud \geq €10M, organized crime link).
2. Assess factual basis: serious indications, flight risk, evidence risk (per Art. 274 CPP).
3. Evaluate whether other measures are insufficient or disproportional (Art. 275 CPP).
4. Issue or request detention/arrest via Italian judge using national procedures (Art. 33(1) EPPO Reg. + Art. 291–292 CPP).
5. Ensure interrogation and review deadlines are met (Art. 294, 303, 305, etc.).
6. Record deductibility of pre-trial custody under Art. 137 CP if convicted.

Criminal Code/Codice Penale (CP)**Article 137**³²⁰ **Pre-Trial Detention**

The imprisonment [cpp 284–286] suffered before the sentence has become irrevocable is deducted from the overall duration of the temporary prison sentence or from the amount of the monetary penalty (1).

The custody is considered, for the purposes of deduction, such as imprisonment or arrest.

³¹⁷ **Art. 77. Codice antimafia.**

1. Nei confronti dei soggetti di cui all'articolo 4 e di coloro che risultino gravemente indiziati di un delitto commesso in occasione o a causa di manifestazioni sportive il fermo di indiziato di delitto è consentito anche al di fuori dei limiti di cui all'articolo 384 del Codice di procedura penale, purché si tratti di reato per il quale è consentito l'arresto facoltativo in flagranza ai sensi dell'articolo 381 del medesimo codice(1).

³¹⁸ See EPPO Handbook 2022, A practical guide on the EPPO for defence lawyers; Rhiele 2024; Kazmin 2024.

³¹⁹ Petrequin 2024.

³²⁰ **Art. 137 Custodio cautelare. CP.**

Code of Criminal Procedure/Codice du procedura penale (CPP)

Article 274 CPC³²¹ Precautionary requirements

1. The precautionary measures are ordered:

- a) when there are specific and mandatory requirements relating to investigations relating to the facts for which one proceeds, in relation to situations of concrete and current danger for the acquisition or authenticity of the evidence, based on factual circumstances expressly indicated in the provision, under penalty of nullity also detectable *ex officio*. Situations of concrete and current danger cannot be identified in the refusal of the person under investigation or of the accused to make statements nor in the non-admission of objections;
- b) when the accused has fled or there is a concrete and current danger that he will flee, provided that the judge considers that a sentence of more than two years of imprisonment may be imposed. Situations of concrete and current danger cannot be inferred exclusively from the gravity of the crime for which one proceeds;
- c) when, due to specific modalities and circumstances of the fact and for the personality of the person under investigation or of the accused, inferred from concrete conduct or acts or from his criminal record, there is a concrete and current danger that he will commit serious crimes with use of weapons or other means of personal or direct violence against the constitutional order or crimes of organized crime or of the same species as the one for which one proceeds. If the danger concerns the commission of crimes of the same kind as the one for which one is proceeding, precautionary custody measures are ordered only in the case of crimes for which a prison sentence of not less than four years is envisaged or, in the case of in custody in prison, of crimes for which the penalty of imprisonment of not less than five years is envisaged as well as for the crime of illicit financing of parties referred to in article 7 of law no. 195, and subsequent amendments.

³²¹ **Art. 274. Esigenze cautelari.**

1. Le misure cautelari sono disposte:

- a) quando sussistono specifiche ed inderogabili esigenze attinenti alle indagini relative ai fatti per i quali si procede, in relazione a situazioni di concreto ed attuale pericolo per l'acquisizione o la genuinità della prova, fondate su circostanze di fatto espressamente indicate nel provvedimento a pena di nullità rilevabile anche d'ufficio. Le situazioni di concreto ed attuale pericolo non possono essere individuate nel rifiuto della persona sottoposta alle indagini o dell'imputato di rendere dichiarazioni né nella mancata ammissione degli addebiti (1);
- b) quando l'imputato si è dato alla fuga o sussiste concreto e attuale pericolo che egli si dia alla fuga, sempre che il giudice ritenga che possa essere irrogata una pena superiore a due anni di reclusione. Le situazioni di concreto e attuale pericolo non possono essere desunte esclusivamente dalla gravità del titolo di reato per cui si procede (2);
- c) quando, per specifiche modalità e circostanze del fatto e per la personalità della persona sottoposta alle indagini o dell'imputato, desunta da comportamenti o atti concreti o dai suoi precedenti penali, sussiste il concreto e attuale pericolo che questi commetta gravi delitti con uso di armi o di altri mezzi di violenza personale o diretti contro l'ordine costituzionale ovvero delitti di criminalità organizzata o della stessa specie di quello per cui si procede. Se il pericolo riguarda la commissione di delitti della stessa specie di quello per cui si procede, le misure di custodia cautelare sono disposte soltanto se trattasi di delitti per i quali è prevista la pena della reclusione non inferiore nel massimo a quattro anni ovvero, in caso di custodia cautelare in carcere, di delitti per i quali è prevista la pena della reclusione non inferiore nel massimo a cinque anni nonché per il delitto di finanziamento illecito dei partiti di cui all'articolo 7 della legge 2 maggio 1974, n. 195, e successive modificazioni. Le situazioni di concreto e attuale pericolo, anche in relazione alla personalità dell'imputato, non possono essere desunte esclusivamente dalla gravità del titolo di reato per cui si procede.

Situations of concrete and current danger, also in relation to the personality of the accused, cannot be inferred exclusively from the gravity of the crime for which one proceeds.

Article 275 Criteria for choosing the measures

1.³²² In ordering the measures, the judge takes into account the specific suitability of each in relation to the nature and degree of the precautionary needs to be satisfied in the specific case.

³²² **Art. 275 Criteri di scelta delle misure. CPP.**

1. Nel disporre le misure, il giudice tiene conto della specifica idoneità di ciascuna in relazione alla natura e al grado delle esigenze cautelari da soddisfare nel caso concreto.

1-bis. Contestualmente ad una sentenza di condanna, l'esame delle esigenze cautelari è condotto tenendo conto anche dell'esito del procedimento, delle modalità del fatto e degli elementi sopravvenuti, dai quali possa emergere che, a seguito della sentenza, risulta taluna delle esigenze indicate nell'articolo 274, comma 1, lettere b) e c). (1)

2. Ogni misura deve essere proporzionata all'entità del fatto e alla sanzione che sia stata (2) o si ritiene possa essere irrogata.

2-bis. Non può essere applicata la misura della custodia cautelare in carcere o quella degli arresti domiciliari se il giudice ritiene che con la sentenza possa essere concessa la sospensione condizionale della pena. Salvo quanto previsto dal comma 3 e ferma restando l'applicabilità degli articoli 276, comma 1-ter, e 280, comma 3, non può applicarsi la misura della custodia cautelare in carcere se il giudice ritiene che, all'esito del giudizio, la pena detentiva irrogata non sarà superiore a tre anni. Tale disposizione non si applica nei procedimenti per i delitti di cui agli articoli 423-bis, 572, 612-bis, 612-ter e 624-bis del codice penale, nonché all'articolo 4-bis della legge 26 luglio 1975, n. 354, e successive modificazioni, e quando, rilevata l'inadeguatezza di ogni altra misura, gli arresti domiciliari non possano essere disposti per mancanza di uno dei luoghi di esecuzione indicati nell'articolo 284, comma 1, del presente codice. (3)

2-ter. Nei casi di condanna di appello le misure cautelari personali sono sempre disposte, contestualmente alla sentenza, quando, all'esito dell'esame condotto a norma del comma 1-bis, risultano sussistere esigenze cautelari previste dall'articolo 274 e la condanna riguarda uno dei delitti previsti dall'articolo 380, comma 1, e questo risulta commesso da soggetto condannato nei cinque anni precedenti per delitti della stessa indole. (4)

3. La custodia cautelare in carcere può essere disposta soltanto quando le altre misure coercitive o interdittive, anche se applicate cumulativamente, risultino inadeguate. Quando sussistono gravi indizi di colpevolezza in ordine ai delitti di cui agli articoli 270, 270-bis e 416-bis del codice penale, è applicata la custodia cautelare in carcere, salvo che siano acquisiti elementi dai quali risulti che non sussistono esigenze cautelari. Salvo quanto previsto dal secondo periodo del presente comma, quando sussistono gravi indizi di colpevolezza in ordine ai delitti di cui all'articolo 51, commi 3-bis e 3-quater, del presente codice nonché in ordine ai delitti di cui agli articoli 575, 600-bis, primo comma, 600-ter, escluso il quarto comma, 600-quinquies e, quando non ricorrano le circostanze attenuanti contemplate, 609-bis, 609-quater e 609-octies del codice penale, è applicata la custodia cautelare in carcere, salvo che siano acquisiti elementi dai quali risulti che non sussistono esigenze cautelari o che, in relazione al caso concreto, le esigenze cautelari possono essere soddisfatte con altre misure.

3-bis. Nel disporre la custodia cautelare in carcere il giudice deve indicare le specifiche ragioni per cui ritiene inidonea, nel caso concreto, la misura degli arresti domiciliari con le procedure di controllo di cui all'articolo 275-bis, comma 1.

4. Quando imputati siano donna incinta o madre di prole di età non superiore a sei anni con lei convivente, ovvero padre, qualora la madre sia deceduta o assolutamente impossibilitata a dare assistenza alla prole, non può essere disposta né mantenuta la custodia cautelare in carcere, salvo che sussistano esigenze cautelari di eccezionale rilevanza. Non può essere disposta la custodia cautelare in carcere, salvo che sussistano esigenze cautelari di eccezionale rilevanza, quando imputato sia persona che ha superato l'età di settanta anni.

4-bis. Non può essere disposta né mantenuta la custodia cautelare in carcere quando l'imputato è persona affetta da AIDS conclamata o da grave deficienza immunitaria accertate ai sensi dell'articolo 286-bis, comma 2, ovvero

1-bis. At the same time as a conviction sentence, the examination of the precautionary requirements is conducted also taking into account the outcome of the procedure, the modalities of the fact and the elements that have arisen, from which it may emerge, following the sentence, one of the requirements indicated in the Article 274, paragraph 1, letters b) and c).

2. Each measure must be proportionate to the extent of the fact and to the sanction that has been (2) or is believed to be imposed.

2-bis. The measure of pre-trial detention in prison or that of house arrest cannot be applied if the judge considers that conditional suspension of the sentence can be granted with the sentence. Without prejudice to the provisions of paragraph 3 and without prejudice to the applicability of articles 276, paragraph 1-ter, and 280, paragraph 3, the measure of pre-trial detention in prison cannot be applied if the judge considers that, following the outcome of the trial, the imprisonment imposed will not exceed three years. This provision does not apply in proceedings for the crimes referred to in articles 423-bis, 572, 612-bis, 612-ter and 624-bis of the criminal code, as well as to article 4-bis of law no. 354, and subsequent amendments, and when, having detected the inadequacy of any other measure, house arrest cannot be ordered due to the lack of one of the places of execution indicated in article 284, paragraph 1, of this code.

2-ter. In cases of condemnation of appeal, personal precautionary measures are always ordered, together with the sentence, when, at the outcome of the examination conducted pursuant to paragraph 1-bis, there are precautionary needs provided for by article 274 and the conviction concerns one of the crimes provided for by article 380, paragraph 1, and this is committed by a person convicted in the previous five years for crimes of the same nature.

3. Pre-trial detention in prison can only be ordered when other coercive or disqualifying measures, even if applied cumulatively, are inadequate. When there are serious indications of guilt in relation to the crimes referred to in articles 270, 270-bis and 416-bis of

da altra malattia particolarmente grave, per effetto della quale le sue condizioni di salute risultano incompatibili con lo stato di detenzione e comunque tali da non consentire adeguate cure in caso di detenzione in carcere.

4-ter. Nell'ipotesi di cui al comma 4-bis, se sussistono esigenze cautelari di eccezionale rilevanza e la custodia cautelare presso idonee strutture sanitarie penitenziarie non è possibile senza pregiudizio per la salute dell'imputato o di quella degli altri detenuti, il giudice dispone la misura degli arresti domiciliari presso un luogo di cura o di assistenza o di accoglienza. Se l'imputato è persona affetta da AIDS conclamata o da grave deficienza immunitaria, gli arresti domiciliari possono essere disposti presso le unità operative di malattie infettive ospedaliere ed universitarie o da altre unità operative prevalentemente impegnate secondo i piani regionali nell'assistenza ai casi di AIDS, ovvero presso una residenza collettiva o casa alloggio di cui all'articolo 1, comma 2, della legge 5 giugno 1990, n. 135.

4-quater. Il giudice può comunque disporre la custodia cautelare in carcere qualora il soggetto risulti imputato o sia stato sottoposto ad altra misura cautelare per uno dei delitti previsti dall'articolo 380, relativamente a fatti commessi dopo l'applicazione delle misure disposte ai sensi dei commi 4-bis e 4-ter. In tal caso il giudice dispone che l'imputato venga condotto in un istituto dotato di reparto attrezzato per la cura e l'assistenza necessarie.

4-quinquies. La custodia cautelare in carcere non può comunque essere disposta o mantenuta quando la malattia si trova in una fase così avanzata da non rispondere più, secondo le certificazioni del servizio sanitario penitenziario o esterno, ai trattamenti disponibili e alle terapie curative.

5. (...) (8).

the criminal code, pre-trial detention in prison is applied, unless elements are acquired which show that there are no precautionary needs. Without prejudice to the provisions of the second sentence of this paragraph, when there are serious indications of guilt in relation to the crimes referred to in article 51, paragraphs 3-bis and 3-quater, of this code as well as in relation to the crimes referred to in articles 575, 600-bis, first paragraph, 600-ter, excluding the fourth paragraph, 600-quinquies and, when the mitigating circumstances contemplated do not exist, 609-bis, 609-quater and 609-octies of the criminal code, precautionary custody in prison is applied, unless elements are acquired which show that there are no precautionary needs or that, in relation to the specific case, the precautionary needs can be met with other measures.

3-bis. In ordering pre-trial detention in prison, the judge must indicate the specific reasons why he considers the extent of house arrest with the control procedures referred to in Article 275-bis, paragraph 1 to be inappropriate in the specific case.

4. When the accused are pregnant woman or mother of children aged no more than six years living with her, or father, if the mother is deceased or absolutely unable to give assistance to the offspring, pre-trial detention in prison cannot be arranged or maintained., unless there are precautionary needs of exceptional importance. Pre-trial detention in prison cannot be ordered, unless there are precautionary needs of exceptional importance, when the accused is a person who is over the age of seventy years.

4-bis. Pre-trial detention in prison cannot be ordered or maintained when the accused is a person suffering from full-blown AIDS or severe immune deficiency established pursuant to Article 286-bis, paragraph 2, or from another particularly serious illness, as a result of which his health conditions are incompatible with the state of detention and in any case such as not to allow adequate treatment in case of detention in prison.

4-ter. In the hypothesis referred to in paragraph 4-bis, if there are precautionary needs of exceptional importance and the precautionary custody in suitable penitentiary health facilities is not possible without prejudice to the health of the accused or that of the other prisoners, the judge orders the measure house arrest at a place of care or assistance or reception. If the accused is a person with full-blown AIDS or severe immune deficiency, house arrest can be arranged at the hospital and university infectious disease operating units or by other operating units mainly engaged according to regional plans in assisting cases of AIDS., or in a collective residence or lodging house referred to in article 1, paragraph 2, of law no. 135.)

4-quater. The judge can in any case order the precautionary custody in prison if the subject is accused or has been subjected to another precautionary measure for one of the crimes provided for by article 380, in relation to facts committed after the application of the measures ordered pursuant to paragraphs 4- bis and 4-ter. In this case, the judge orders that the accused be taken to an institution with a department equipped for the necessary care and assistance. (7)

4-quinquies. Pre-trial detention in prison cannot in any case be ordered or maintained when the disease is at such an advanced stage that, according to the certifications of the penitentiary or external health service, it is no longer responsible for available treatments and curative therapies.

5. (...).

Chapter II Coercive measures

Article 280³²³ Conditions for the applicability of coercive measures

1. Without prejudice to the provisions of paragraphs 2 and 3 of this article and of Art. 391, the measures provided for in this chapter can be applied only when proceeding with crimes for which the law establishes the penalty of life imprisonment or imprisonment exceeding a maximum of three years.

2. Pre-trial detention in prison can only be ordered for crimes committed or attempted, for which a sentence of imprisonment of no less than five years is envisaged and for the crime of illicit financing of parties referred to in article 7 of the law. May 2, 1974, n. 195, and subsequent amendments.

3. The provision referred to in paragraph 2 does not apply to anyone who has violated the requirements inherent in a precautionary measure.

³²³ **Art. 280. Condizioni di applicabilità delle misure coercitive.**

1. Salvo quanto disposto dai commi 2 e 3 del presente articolo e dall'Art. 391, le misure previste in questo capo possono essere applicate solo quando si procede per delitti per i quali la legge stabilisce la pena dell'ergastolo o della reclusione superiore nel massimo a tre anni.

2. La custodia cautelare in carcere può essere disposta solo per delitti consumati o tentati, per i quali sia prevista la pena della reclusione non inferiore nel massimo a cinque anni e per il delitto di finanziamento illecito dei partiti di cui all'articolo 7 della legge 2 maggio 1974, n. 195, e successive modificazioni. (1)

3. La disposizione di cui al comma 2 non si applica nei confronti di chi abbia trasgredito alle prescrizioni inerenti ad una misura cautelare.

Article 285³²⁴ Pre-trial detention in prison

1. With the decision that applies pre-trial detention, the judge orders the officers and agents of the judicial police that the accused be arrested and immediately taken to a detention facility to remain at the disposal of the judicial authority.
2. Before the transfer to the institute, the person subjected to pre-trial detention cannot be subject to limitation of freedom, except for the time and in the manner strictly necessary for its transfer.
3. To determine the sentence to be executed, the pre-trial detention suffered is calculated in accordance with Article 657, even when it is a matter of pre-trial detention suffered abroad as a result of an extradition request or in the case of renewal of the judgment pursuant to Article 11 of the Criminal Code.

[Article 285-bis] [...]

Article 286³²⁵

1. If the person to be placed in pre-trial detention is in a state of infirmity of mind which excludes or greatly diminishes his or her ability to understand or form his or her will, the judge deciding over the place of custody in prison, can order temporary hospitalization in a suitable structure of the psychiatric hospital service, adopting the necessary measures to prevent the danger of escape. The hospitalization cannot be maintained when it appears that the accused is no longer mentally ill.
2. The provisions of article 285 paragraphs 2 and 3 apply.

In relation to **order/or request** the following Articles are of relevance:

11

Article 291 Application procedure

12

- 1.³²⁶ The measures are ordered at the request of the public prosecutor, who presents to the competent judge the elements on which the request is based, including the minutes

³²⁴ **Art. 285. Custodia cautelare in carcere.** [For Italian text, see online please].

³²⁵ **Art. 286. Custodia cautelare in luogo di cura.**

1. Se la persona da sottoporre a custodia cautelare si trova in stato di infermità di mente che ne esclude o ne diminuisce grandemente la capacità di intendere o di volere, il giudice, in luogo della custodia in carcere, può disporre il ricovero provvisorio in idonea struttura del servizio psichiatrico ospedaliero, adottando i provvedimenti necessari per prevenire il pericolo di fuga. Il ricovero non può essere mantenuto quando risulta che l'imputato non è più infermo di mente.

2. Si applicano le disposizioni dell'articolo 285 commi 2 e 3.

³²⁶ **Art. 291. Procedimento applicativo.**

(1) 1. Le misure sono disposte su richiesta del pubblico ministero, che presenta al giudice competente gli elementi su cui la richiesta si fonda, compresi i verbali di cui all'articolo 268, comma 2, limitatamente alle comunicazioni e conversazioni rilevanti, e comunque conferiti nell'archivio di cui all'articolo 269, nonché tutti gli elementi a favore dell'imputato e le eventuali deduzioni e memorie difensive già depositate.

referred to in article 268, paragraph 2, limited to relevant communications and conversations, and in any case conferred in the archive referred to in article 269, as well as all the elements in favour of the accused and any deductions and defensive briefs already filed.

1-ter. When necessary, only the essential passages of intercepted communications and conversations are reproduced in the request.

2. If the judge recognizes his / her incompetence for any cause, when the conditions are met and there is an urgent need to satisfy one of the precautionary requirements provided for by article 274, he orders the measure requested with the same provision with which he declares his incompetence. In this case, the provisions of article 27 apply.

2-bis. In case of necessity or urgency, the public prosecutor may ask the judge, in the interest of the person offended by the crime, for the provisional patrimonial measures referred to in article 282-bis. The provision loses effectiveness if the precautionary measure is subsequently revoked.

- 13 A judge's order imposing a precautionary measure must include the accused's identifying details, a **description of the alleged facts and laws violated**, a reasoned assessment of the specific precautionary needs, and the concrete evidence justifying the measure, including why less severe measures are inadequate. It must also indicate the expiry date, assess both incriminating and exculpatory elements, and bear the judge's signature, or it is null.

14 **Article 292 Order of the judge**

1. On the request of the public prosecutor, the judge provides by order.³²⁷

[1-bis. Nel corso delle indagini preliminari, il giudice può disporre misure meno gravi solo se il pubblico ministero non ha espressamente richiesto di provvedere esclusivamente in ordine alle misure indicate.]

1-ter. - Quando è necessario, nella richiesta sono riprodotti soltanto i brani essenziali delle comunicazioni e conversazioni intercettate.

2. Se riconosce la propria incompetenza per qualsiasi causa, il giudice, quando ne ricorrono le condizioni e sussiste l'urgenza di soddisfare taluna delle esigenze cautelari previste dall'articolo 274, dispone la misura richiesta con lo stesso provvedimento con il quale dichiara la propria incompetenza. Si applicano in tal caso le disposizioni dell'articolo 27.

2-bis. In caso di necessità o urgenza il pubblico ministero può chiedere al giudice, nell'interesse della persona offesa, le misure patrimoniali provvisorie di cui all'articolo 282-bis. Il provvedimento perde efficacia qualora la misura cautelare sia successivamente revocata.

³²⁷ **Art. 292. Ordinanza del giudice.**

1. Sulla richiesta del pubblico ministero il giudice provvede con ordinanza.

2. L'ordinanza che dispone la misura cautelare contiene, a pena di nullità rilevabile anche d'ufficio:

a) le generalità dell'imputato o quanto altro valga a identificarlo;

b) la descrizione sommaria del fatto con l'indicazione delle norme di legge che si assumono violate;

c) l'esposizione e l'autonoma valutazione delle specifiche esigenze cautelari e degli indizi che giustificano in concreto la misura disposta, con l'indicazione degli elementi di fatto da cui sono desunti e dei motivi per i quali essi assumono rilevanza, tenuto conto anche del tempo trascorso dalla commissione del reato; (1)

2. The order that orders the precautionary measure contains, under penalty of nullity, also detectable *ex officio*:

- a) the personal details of the accused or whatever else is used to identify him;
- b) a brief description of the fact with an indication of the laws that are assumed to be violated;
- c) the presentation and autonomous assessment of the specific precautionary needs and the evidence that concretely justify the measure ordered, with an indication of the factual elements from which they are derived and the reasons why they assume relevance, also taking into account the time elapsed since the crime was committed; (1)
- c-bis) the presentation and autonomous assessment of the reasons for which the elements provided by the defence were deemed irrelevant, as well as, in the event of application of the measure of pre-trial detention in prison, the presentation of the concrete and specific reasons for which the needs referred to in Article 274 cannot be met with other measures; (2)
- d) setting the expiry date of the measure, in relation to the investigations to be carried out, when this is arranged in order to guarantee the precautionary need referred to in letter a) of paragraph 1 of article 274;
- e) the date and signature of the judge.

2-bis. The order also contains the signature of the auxiliary who assists the judge, the seal of the office and, if possible, the indication of the place where the accused is likely to be.

2-ter. The order is void if it does not contain the assessment of the elements against and in favour of the accused, referred to in article 358, as well as in article 327-bis.

2-quater. When it is necessary for the exposition of the precautionary requirements and of the clues, of the intercepted communications and conversations, only the essential passages are reproduced. (3)

3. The uncertainty about the judge who issued the order or about the person against whom the measure is ordered exempts the officers and agents in charge of executing it.

c-bis) l'esposizione e l'autonoma valutazione dei motivi per i quali sono stati ritenuti non rilevanti gli elementi forniti dalla difesa, nonché, in caso di applicazione della misura della custodia cautelare in carcere, l'esposizione delle concrete e specifiche ragioni per le quali le esigenze di cui all'articolo 274 non possono essere soddisfatte con altre misure; (2)

d) la fissazione della data di scadenza della misura, in relazione alle indagini da compiere, allorché questa è disposta al fine di garantire l'esigenza cautelare di cui alla lettera a) del comma 1 dell'articolo 274;

e) la data e la sottoscrizione del giudice.

2-bis. L'ordinanza contiene altresì la sottoscrizione dell'ausiliario che assiste il giudice, il sigillo dell'ufficio e, se possibile, l'indicazione del luogo in cui probabilmente si trova l'imputato.

2-ter. L'ordinanza è nulla se non contiene la valutazione degli elementi a carico e a favore dell'imputato, di cui all'articolo 358, nonché all'articolo 327-bis.

2-quater. Quando è necessario per l'esposizione delle esigenze cautelari e degli indizi, delle comunicazioni e conversazioni intercettate sono riprodotti soltanto i brani essenziali. (3)

3. L'incertezza circa il giudice che ha emesso il provvedimento ovvero circa la persona nei cui confronti la misura è disposta esime gli ufficiali e gli agenti incaricati dal darvi esecuzione.

Article 297³²⁸ Calculation of the terms of duration of the measures

1. The effects of pre-trial detention run from the moment of capture, arrest or detention.
2. The effects of the other measures take effect from the moment in which the ordinance ordering them is notified in accordance with Article 293.
3. If several orders are issued against a defendant which provide for the same measure for the same fact, albeit differently detailed or qualified, or for different facts committed prior to the issuance of the first order in relation to which there is a connection pursuant to article 12, paragraph 1, letter b) and c), limited to cases of crimes committed to carry out the others, the terms run from the day on which the first order was executed or notified and are commensurate with the most serious charge. The provision does not apply in relation to orders for facts that cannot be deduced from the documents before the committal for trial ordered for the fact with which there is a connection pursuant to this paragraph.
4. In calculating the terms of the precautionary custody, account is taken of the days in which the hearings were held and those used for the resolution of the sentence in the first instance judgment or in the judgment on appeals only for the purpose of determining the overall duration of the custody pursuant to article 303 paragraph 4.
5. If the accused is detained for another crime or is interned as a security measure, the effects of the measure will run from the day on which the order providing for it is served, if they are compatible with the state of detention or internment; otherwise they run from the termination of this. For the sole purpose of calculating the maximum duration, pre-trial detention is considered compatible with the state of detention for execution of a sentence or internment for security measures.

³²⁸ **Art. 297. Computo dei termini di durata delle misure.**

1. Gli effetti della custodia cautelare decorrono dal momento della cattura, dell'arresto o del fermo.
2. Gli effetti delle altre misure decorrono dal momento in cui l'ordinanza che le dispone è notificata a norma dell'articolo 293.
3. Se nei confronti di un imputato sono emesse più ordinanze che dispongono la medesima misura per uno stesso fatto, benché diversamente circostanziato o qualificato, ovvero per fatti diversi commessi anteriormente alla emissione della prima ordinanza in relazione ai quali sussiste connessione ai sensi dell'articolo 12, comma 1, lettera b) e c), limitatamente ai casi di reati commessi per eseguire gli altri, i termini decorrono dal giorno in cui è stata eseguita o notificata la prima ordinanza e sono commisurati all'imputazione più grave. La disposizione non si applica relativamente alle ordinanze per fatti non desumibili dagli atti prima del rinvio a giudizio disposto per il fatto con il quale sussiste connessione ai sensi del presente comma.
4. Nel computo dei termini della custodia cautelare si tiene conto dei giorni in cui si sono tenute le udienze e di quelli impiegati per la deliberazione della sentenza nel giudizio di primo grado o nel giudizio sulle impugnazioni solo ai fini della determinazione della durata complessiva della custodia a norma dell'articolo 303 comma 4.
5. Se l'imputato è detenuto per un altro reato o è internato per misura di sicurezza, gli effetti della misura decorrono dal giorno in cui è notificata l'ordinanza che la dispone, se sono compatibili con lo stato di detenzione o di internamento; altrimenti decorrono dalla cessazione di questo. Ai soli effetti del computo dei termini di durata massima, la custodia cautelare si considera compatibile con lo stato di detenzione per esecuzione di pena o di internamento per misura di sicurezza.

Article 302³²⁹ End of custody for failure to interrogate the person in custody

1. Pre-trial detention ordered during the preliminary investigations loses its effect immediately if the judge does not proceed to the interrogation within the term provided for by Art. 294. After the release, the measure can be ordered again by the judge, at the request of the public prosecutor, after questioning, when, having evaluated the results of this, the conditions indicated in articles 273, 274 and 275 exist. The same applies in case in which the person, without justified reason, does not appear for questioning. The provisions of article 294 paragraphs 3, 4 and 5 are observed.

Article 303 Terms of maximum duration of pre-trial detention

1. Pre-trial detention loses its effectiveness when:

a) from the beginning of its execution, the following terms have elapsed without the provision that establishes the judgment or the ordinance with which the judge orders the abbreviated judgment pursuant to article 438 has been issued, or without the pronouncement of the sentence applying the penalty at the request of the parties: (2)

1) three months, when proceeding for a crime for which the law establishes the penalty of imprisonment not exceeding a maximum of six years;

2) six months, when proceeding for a crime for which the law establishes the penalty of imprisonment exceeding a maximum of six years, except as provided for in number 3);

3) one year, when proceeding for a crime for which the law establishes the penalty of life imprisonment or the penalty of imprisonment of no less than twenty years or for one of the crimes indicated in article 407, paragraph 2, letter a), provided that for the same the law provides for the penalty of imprisonment exceeding a maximum of six years;

b) the following terms have elapsed since the issuance of the provision ordering the judgment or the supervening execution of the custody without a first degree sentence being pronounced:

1) six months, when proceeding for a crime for which the law establishes the penalty of imprisonment not exceeding a maximum of six years;

2) one year, when proceeding for a crime for which the law establishes the penalty of imprisonment not exceeding a maximum of twenty years, except as provided for by number 1);

³²⁹ **Art. 302. Estinzione della custodia per omesso interrogatorio della persona in stato di custodia cautelare.** (1) (2)

1. La custodia cautelare disposta nel corso delle indagini preliminari perde immediatamente efficacia se il giudice non procede all'interrogatorio entro il termine previsto dall'Art. 294. Dopo la liberazione, la misura può essere nuovamente disposta dal giudice, su richiesta del pubblico ministero, previo interrogatorio, allorché, valutati i risultati di questo, sussistono le condizioni indicate negli articoli 273, 274 e 275. Nello stesso modo si procede nel caso in cui la persona, senza giustificato motivo, non si presenta a rendere interrogatorio. Si osservano le disposizioni dell'articolo 294 commi 3, 4 e 5.

3) one year and six months, when proceeding with a crime for which the law establishes the penalty of life imprisonment or the penalty of imprisonment exceeding a maximum of twenty years;

3-bis) in the case of the crimes referred to in article 407, paragraph 2, letter a), the terms referred to in numbers 1), 2) and 3) are increased up to six months. This term is attributed to that of the previous phase if not completely used, or to the terms referred to in letter d) for any residual pArt. In the latter case, the terms referred to in letter d) are proportionally reduced; b-bis) the following terms have elapsed since the issuance of the order by which the judge orders the abbreviated judgment or the supervening execution of the custody sentenced in accordance with Article 442: (3)

1) three months, when proceeding for a crime for which the law establishes the penalty of imprisonment not exceeding a maximum of six years;

2) six months, when proceeding for a crime for which the law establishes the penalty of imprisonment not exceeding a maximum of twenty years, except as provided in number 1;

3) nine months, when one proceeds for a crime for which the law establishes the penalty of life imprisonment or the penalty of imprisonment exceeding a maximum of twenty years;

c) the following terms have elapsed since the first degree sentence was pronounced or the custody was carried out, without a sentence of conviction having been pronounced at the level of appeal:

1) nine months, if there has been a sentence of imprisonment not exceeding three years;

2) one year, if there has been a sentence of imprisonment not exceeding ten years;

3) one year and six months, if there has been a sentence of life imprisonment or imprisonment for more than ten years;

d) the same deadlines as set out in letter c) have elapsed from the pronouncement of the sentence in the appeal grade or from the supervening execution of the custody, without an irrevocable sentence of conviction being pronounced, except for the cases referred to in letter b), number 3 -BIS). However, if there has been a conviction in the first instance, or if the appeal was lodged exclusively by the public prosecutor, only the provision of paragraph 4 applies.

2. In the event that, following annulment with postponement by the Court of Cassation or for another cause, the proceeding regresses to a different stage or grade of judgment or is deferred to another judge, from the date of the proceeding ordering the recourse or postponement or from the supervening execution of the precautionary custody, the terms provided for in paragraph 1 will run again in relation to each state and grade of the procedure.

3. In the event of evasion of the accused subject to pre-trial detention, the terms provided for in paragraph 1 shall run again, in relation to each stage and grade of the procedure, from the moment in which the pre-trial detention is restored.

4. The overall duration of pre-trial detention, also considering the extensions provided for by article 305, cannot exceed the following terms:

- a) two years, when proceeding for a crime for which the law establishes the penalty of imprisonment not exceeding a maximum of six years;
- b) four years, when proceeding for a crime for which the law establishes the penalty of imprisonment not exceeding a maximum of twenty years, except for the provisions of letter a);
- c) six years, when proceeding for a crime for which the law establishes the penalty of life imprisonment or imprisonment exceeding a maximum of twenty years.

Article 304³³⁰ Suspension of the terms of maximum duration of pre-trial detention

1. The terms provided for in article 303 are suspended, by an appealable order pursuant to article 310, in the following cases:

- a) in the trial phase, during the time in which the trial is suspended or postponed due to the impediment of the accused or his counsel or at the request of the accused or his

³³⁰ **Art. 304. CPP. Sospensione dei termini di durata massima della custodia cautelare.**

1. I termini previsti dall'articolo 303 sono sospesi, con ordinanza appellabile a norma dell'articolo 310, nei seguenti casi:

- a) nella fase del giudizio, durante il tempo in cui il dibattimento è sospeso o rinviato per impedimento dell'imputato o del suo difensore ovvero su richiesta dell'imputato o del suo difensore, sempre che la sospensione o il rinvio non siano stati disposti per esigenze di acquisizione della prova o a seguito di concessione di termini per la difesa;
- b) nella fase del giudizio, durante il tempo in cui il dibattimento è sospeso o rinviato a causa della mancata presentazione, dell'allontanamento o della mancata partecipazione di uno o più difensori che rendano privo di assistenza uno o più imputati;
- c) nella fase del giudizio, durante la pendenza dei termini previsti dall'articolo 544, commi 2 e 3;
- c-bis) nel giudizio abbreviato, durante il tempo in cui l'udienza è sospesa o rinviata per taluno dei casi indicati nelle lettere a) e b) e durante la pendenza dei termini previsti dall'articolo 544, commi 2 e 3. (1)
- c-ter) nei casi previsti dall'articolo 545-bis, durante il tempo intercorrente tra la lettura del dispositivo indicato al comma 1 dello stesso articolo e l'udienza fissata per la decisione sulla eventuale sostituzione della pena detentiva con una pena sostitutiva ai sensi dell'articolo 53 della legge 24 novembre 1981, n. 689; in tal caso, la sospensione dei termini previsti dall'articolo 303 non può comunque avere durata superiore a sessanta giorni. (10)

2. I termini previsti dall'articolo 303 possono essere altresì sospesi quando si procede per taluno dei reati indicati nell'articolo 407, comma 2, lettera a), nel caso di dibattimenti o di giudizi abbreviati particolarmente complessi, durante il tempo in cui sono tenute le udienze o si delibera la sentenza nel giudizio di primo grado o nel giudizio sulle impugnazioni. (2)

3. Nei casi previsti dal comma 2, la sospensione è disposta dal giudice, su richiesta del pubblico ministero, con ordinanza appellabile a norma dell'articolo 310.

4. I termini previsti dall'articolo 303, comma 1, lettera a), sono sospesi, con ordinanza appellabile a norma dell'articolo 310, se l'udienza preliminare è sospesa o rinviata per taluno dei casi indicati nel comma 1, lettere a) e b), del presente articolo.

5. Le disposizioni di cui alle lettere a) e b) del comma 1, anche se riferite al giudizio abbreviato, e di cui al comma 4 non si applicano ai coimputati ai quali i casi di sospensione non si riferiscono e che chiedono che si proceda nei loro confronti previa separazione dei processi.

6. La durata della custodia cautelare non può comunque superare il doppio dei termini previsti dall'articolo 303, commi 1, 2 e 3 senza tenere conto dell'ulteriore termine previsto dall'articolo 303, comma 1, lettera b), numero 3-bis) e i termini aumentati della metà previsti dall'articolo 303, comma 4, ovvero, se più favorevole, i due terzi del massimo della pena temporanea prevista per il reato contestato o ritenuto in sentenza. A tal fine la pena dell'ergastolo è equiparata alla pena massima temporanea.

7. Nel computo dei termini di cui al comma 6, salvo che per il limite relativo alla durata complessiva della custodia cautelare, non si tiene conto dei periodi di sospensione di cui al comma 1, lettera b).

counsel, provided that the suspension or postponement has not been arranged for the need for obtaining evidence or following the granting of terms for defence;

b) in the trial phase, during the time in which the trial is suspended or postponed due to the non-presentation, removal or non-participation of one or more defenders who render one or more defendants unavailable;

c) in the trial phase, during the pending terms provided for by article 544, paragraphs 2 and 3;

c-bis) in the abbreviated judgment, during the time in which the hearing is suspended or postponed for any of the cases indicated in letters a) and b) and during the pending period provided for in article 544, paragraphs 2 and 3.

c-ter) in the cases provided for by Article 545-bis, during the period between the reading of the operative part referred to in paragraph 1 of the same Article and the hearing set for the decision on the possible substitution of the custodial sentence with a substitute penalty pursuant to Article 53 of Law No. 689 of 24 November 1981; in such case, the suspension of the time-limits laid down in Article 303 may in any event not exceed sixty days.

2. The time limits provided for in article 303 may also be suspended when proceeding with one of the offenses indicated in article 407, paragraph 2, letter a), in the case of particularly complex debates or abbreviated judgments, during the time in which they are the hearings are held or the sentence is passed in the first instance judgment or in the judgment on appeals.

3. In the cases provided for by paragraph 2, the suspension is ordered by the judge, at the request of the public prosecutor, with an appealable order pursuant to article 310.

4. The terms provided for in article 303, paragraph 1, letter a), are suspended, by an appealable order pursuant to article 310, if the preliminary hearing is suspended or postponed for any of the cases indicated in paragraph 1, letters a) and b) of this article.

5. The provisions referred to in letters a) and b) of paragraph 1, even if referring to the abbreviated judgment, and referred to in paragraph 4 do not apply to co-defendants to whom the cases of suspension do not refer and who request that their comparisons after separation of the processes.

6. The duration of pre-trial detention cannot in any case exceed twice the terms provided for in article 303, paragraphs 1, 2 and 3, without taking into account the additional term provided for in article 303, paragraph 1, letter b), number 3- bis) and the terms increased by half provided for in article 303, paragraph 4, or, if more favourable, two thirds of the maximum of the temporary penalty provided for the offense contested or considered in sentence. To this end, the penalty of life imprisonment is equivalent to the maximum temporary penalty.

7. In calculating the terms referred to in paragraph 6, except for the limit relating to the overall duration of the pre-trial detention, the suspension periods referred to in paragraph 1, letter b) are not taken into account.

Article 305³³¹ Extension of pre-trial detention

1. In every state and grade of the proceedings on the merits, when an expert evidence on the state of mind of the accused is ordered, the terms of pre-trial detention are extended for the period of time given for the completion of the expert evidence. The extension is ordered by order by the judge, at the request of the public prosecutor, after hearing the defender. The order is subject to appeal by cassation in the forms provided for by article 311.

2. During the preliminary investigations, the public prosecutor may also request the extension of the terms of pre-trial detention that are close to expiring, when there are serious precautionary needs which, in relation to particularly complex investigations, or to new investigations ordered pursuant to article 415-bis, paragraph 4, make the continuation of custody indispensable. The judge, having consulted the public prosecutor and the defender, proceeds with an appealable order in accordance with article 310. The extension can be renewed only once. The terms provided for in article 303 paragraph 1 cannot in any case be exceeded by more than half.

Article 306³³² Provisions consequent to the extinction of the measures

1. In cases in which the precautionary detention loses its effectiveness according to the provisions of this title, the judge orders by order the immediate release of the person subjected to the measure.

2. In cases of loss of effectiveness of other precautionary measures, the judge adopts by order the measures necessary for the immediate cessation of the measures themselves.

Pre-trial detention may **be extended in specific circumstances**. This extension requires a judicial decree based on a public prosecutor's request, ensuring the total duration does not exceed statutory limits by more than half. **15**

³³¹ **Art. 305. Proroga della custodia cautelare.**

1. In ogni stato e grado del procedimento di merito, quando è disposta perizia sullo stato di mente dell'imputato, i termini di custodia cautelare sono prorogati per il periodo di tempo assegnato per l'espletamento della perizia. La proroga è disposta con ordinanza dal giudice, su richiesta del pubblico ministero, sentito il difensore. L'ordinanza è soggetta a ricorso per cassazione nelle forme previste dall'articolo 311.

2. Nel corso delle indagini preliminari, il pubblico ministero può altresì chiedere la proroga dei termini di custodia cautelare che siano prossimi a scadere, quando sussistono gravi esigenze cautelari che, in rapporto ad accertamenti particolarmente complessi, o a nuove indagini disposte ai sensi dell'articolo 415-bis, comma 4, rendano indispensabile il protrarsi della custodia. Il giudice, sentiti il pubblico ministero e il difensore, provvede con ordinanza appellabile a norma dell'articolo 310. La proroga è rinnovabile una sola volta. I termini previsti dall'articolo 303 comma 1 non possono essere comunque superati di oltre la metà.

³³² **Art. 306. Provvedimenti conseguenti alla estinzione delle misure.**

1. Nei casi in cui la custodia cautelare perde efficacia secondo le norme del presente titolo, il giudice dispone con ordinanza l'immediata liberazione della persona sottoposta alla misura.

2. Nei casi di perdita di efficacia di altre misure cautelari, il giudice adotta con ordinanza i provvedimenti necessari per la immediata cessazione delle misure medesime.

Article 307³³³ Measures in the event of release from prison due to the expiry of the terms

1. The judge orders the other precautionary measures for which the conditions are met with respect to the accused who has been released from prison due to the expiry of the terms, only if the reasons that led to the precautionary detention exist.

1-bis. If one of the offenses indicated in article 407, paragraph 2, letter a) is prosecuted, the judge orders the precautionary measures indicated in articles 281, 282 and 283, even cumulatively.

2. Pre-trial detention, where necessary pursuant to Article 275, is however reinstated:

a) if the accused has maliciously infringed the requirements inherent in a precautionary measure ordered pursuant to paragraph 1, provided that, in relation to the nature of such transgression, one of the precautionary requirements provided for by article 274 is met;

b) at the same time or subsequent to the sentence of first or second instance, when the precautionary need provided for by article 274 paragraph 1 letter b) occurs.

3. With the reinstatement of custody, the terms relating to the phase in which the proceedings are found start again but, for the purposes of calculating the term provided for in article 303, paragraph 4, the custody previously suffered is also taken into account.

4. The officers and judicial police officers may proceed to arrest the accused who, in breach of the requirements inherent in a precautionary measure ordered pursuant to paragraph 1 or in the hypothesis provided for by paragraph 2, letter b), is about to leak. Notice of the arrest is given without delay, and in any case within twenty-four hours, to the public prosecutor at the court of the place where the arrest was carried out. The provisions on the arrest of a suspect are applied, insofar as they are compatible. With

³³³ **Art. 307. Provvedimenti in caso di scarcerazione per decorrenza dei termini.**

1. Nei confronti dell'imputato scarcerato per decorrenza dei termini il giudice dispone le altre misure cautelari di cui ricorrono i presupposti, solo se sussistano le ragioni che avevano determinato la custodia cautelare.

1-bis. Qualora si proceda per taluno dei reati indicati nell'articolo 407, comma 2, lettera a), il giudice dispone le misure cautelari indicate dagli articoli 281, 282 e 283 anche cumulativamente.

2. La custodia cautelare, ove risulti necessaria a norma dell'articolo 275, è tuttavia ripristinata:

a) se l'imputato ha dolosamente trasgredito alle prescrizioni inerenti a una misura cautelare disposta a norma del comma 1, sempre che, in relazione alla natura di tale trasgressione, ricorra taluna delle esigenze cautelari previste dall'articolo 274;

b) contestualmente o successivamente alla sentenza di condanna di primo o di secondo grado, quando ricorre l'esigenza cautelare prevista dall'articolo 274 comma 1 lettera b).

3. Con il ripristino della custodia, i termini relativi alla fase in cui il procedimento si trova decorrono nuovamente ma, ai fini del computo del termine previsto dall'articolo 303 comma 4, si tiene conto anche della custodia anteriormente subita.

4. Gli ufficiali e gli agenti di polizia giudiziaria possono procedere al fermo dell'imputato che, trasgredendo alle prescrizioni inerenti a una misura cautelare disposta a norma del comma 1 o nell'ipotesi prevista dal comma 2, lettera b), stia per darsi alla fuga. Del fermo è data notizia senza ritardo, e comunque entro le ventiquattro ore, al procuratore della Repubblica presso il tribunale del luogo ove il fermo è stato eseguito. Si applicano, in quanto compatibili, le disposizioni sul fermo di indiziato di delitto. Con il provvedimento di convalida, il giudice per le indagini preliminari, se il pubblico ministero ne fa richiesta, dispone con ordinanza, quando ne ricorrono le condizioni, la misura della custodia cautelare e trasmette gli atti al giudice competente.

5. La misura disposta a norma del comma 4 cessa di avere effetto se, entro venti giorni dalla ordinanza, il giudice competente non provvede a norma del comma 2 lettera a).

the validation provision, the judge for preliminary investigations, if the public prosecutor requests it, orders by order, when the conditions are met, the extent of pre-trial detention and transmits the documents to the competent judge.

5. The measure ordered pursuant to paragraph 4 ceases to have effect if, within twenty days of the order, the competent judge fails to act pursuant to paragraph 2 letter a).

Article 308³³⁴ Maximum duration of measures other than pre-trial detention

1. Coercive measures other than pre-trial detention lose their effectiveness when a period of time equal to twice the terms provided for in article 303 has elapsed from the start of their execution.

2. Disqualification measures cannot last more than twelve months and lose their effectiveness when the term set by the judge in the ordinance has expired. In any case, if they have been ordered for probative reasons, the judge may order their renewal within the time limits set out in the first sentence of this paragraph.

2-bis. [deleted]

3. The extinction of the measures does not affect the exercise of the powers that the law attributes to the criminal judge or to other authorities in the application of ancillary penalties or other disqualifying measures.[...] [for Art. 385 cf. already above, arrest]

Article 386 Duties of the judicial police in the event of arrest or detention

See above → Article 27 Right of , Urgent measures of national authorities for securing an investigation and prosecution.

Article 389³³⁵ Cases of immediate release of the person arrested or detained

1. If it is evident that the arrest or detention was carried out by mistake in person or outside the cases provided for by law or if the measure of the arrest or detention has become ineffective pursuant to articles 386 paragraph 7 and 390 paragraph 3, the public

³³⁴ **Art. 308. Termini di durata massima delle misure diverse dalla custodia cautelare.** (3)

1. Le misure coercitive diverse dalla custodia cautelare perdono efficacia quando dall'inizio della loro esecuzione è decorso un periodo di tempo pari al doppio dei termini previsti dall'articolo 303.

2. Le misure interdittive non possono avere durata superiore a dodici mesi e perdono efficacia quando è decorso il termine fissato dal giudice nell'ordinanza. In ogni caso, qualora siano state disposte per esigenze probatorie, il giudice può disporre la rinnovazione nei limiti temporali previsti dal primo periodo del presente comma. (2)

2-bis. (1).

3. L'estinzione delle misure non pregiudica l'esercizio dei poteri che la legge attribuisce al giudice penale o ad altre autorità nell'applicazione di pene accessorie o di altre misure interdittive.

³³⁵ **Art. 389. Casi di immediata liberazione dell'arrestato o del fermato.**

1. Se risulta evidente che l'arresto o il fermo è stato eseguito per errore di persona o fuori dei casi previsti dalla legge o se la misura dell'arresto o del fermo è divenuta inefficace a norma degli articoli 386 comma 7 e 390 comma 3, il pubblico ministero dispone con decreto motivato che l'arrestato o il fermato sia posto immediatamente in libertà.

2. La liberazione è altresì disposta prima dell'intervento del pubblico ministero dallo stesso ufficiale di polizia giudiziaria, che ne informa subito il pubblico ministero del luogo dove l'arresto o il fermo è stato eseguito.

prosecutor orders with a motivated decree that the person arrested or detained is immediately released.

2. The release is also ordered before the intervention of the public prosecutor by the same judicial police officer, who immediately informs the public prosecutor of the place where the arrest or detention was carried out.

Article 657³³⁶ Calculation of pre-trial detention and untitled expiated sentences

1. The public prosecutor, in determining the prison sentence to be executed, calculates the period of pre-trial detention suffered for the same or for another crime, even if the custody is still in progress. It proceeds in the same way in the case of the provisional application of a detention security measure, if this has not been definitively applied.

2. The public prosecutor also calculates the period of imprisonment expiated for a different crime, when the relative sentence has been revoked, when an amnesty has been granted for the crime or when a pardon has been granted, within the limits of the same.

3. In the cases referred to in paragraphs 1 and 2, the convicted person may request the public prosecutor or, in the event of a conviction to the penalty of substitute community service, the judge, that periods of pre-trial detention and custodial sentence already served, after conversion, be credited towards the determination of the pecuniary penalty or the substitute penalty to be executed; in the cases referred to in paragraph 2, he or she may also request that substitute penalties already served be credited towards substitute penalties to be executed for another offence.

4. In any case, only the pre-trial detention suffered or the penalties expiated after the commission of the offense for which the sentence to be executed must be determined are counted.

5. The public prosecutor provides by decree, which must be notified to the sentenced person and his or her defence counsel.

- 16** It provides when determining the prison sentence to be served, the public prosecutor must credit any period of pre-trial detention or imprisonment already served.

³³⁶ **Art. 657. Computo della custodia cautelare e delle pene espiate senza titolo.**

1. Il pubblico ministero, nel determinare la pena detentiva da eseguire, computa il periodo di custodia cautelare subita per lo stesso o per altro reato, anche se la custodia è ancora in corso. Allo stesso modo procede in caso di applicazione provvisoria di una misura di sicurezza detentiva, se questa non è stata applicata definitivamente.

2. Il pubblico ministero computa altresì il periodo di pena detentiva espiata per un reato diverso, quando la relativa condanna è stata revocata, quando per il reato è stata concessa amnistia o quando è stato concesso indulto, nei limiti dello stesso.

3. Nei casi previsti dai commi 1 e 2, il condannato può chiedere al pubblico ministero o, in caso di condanna alla pena del lavoro di pubblica utilità sostitutivo, al giudice che i periodi di custodia cautelare e di pena detentiva espiata, operato il ragguglio, siano computati per la determinazione della pena pecuniaria o della pena sostitutiva da eseguire; nei casi previsti dal comma 2, può altresì chiedere che le pene sostitutive espiate siano computate nelle pene sostitutive da eseguire per altro reato (2).

4. In ogni caso sono computate soltanto la custodia cautelare subita o le pene espiate dopo la commissione del reato per il quale deve essere determinata la pena da eseguire.

5. Il pubblico ministero provvede con decreto, che deve essere notificato al condannato e al suo difensore.

Article 692 Expenses of pre-trial detention

1. When the accused is sentenced to imprisonment for the offense for which he was subjected to pre-trial detention, the expenses for the maintenance during the period of custody are charged to him.

³³⁷2. If the pre-trial detention exceeds the duration of the sentence, the costs relating to the longer duration are deducted.

Article 745³³⁸ Request for precautionary measures abroad

1. If the execution of a sentence restricting personal liberty is requested and the offender is abroad, the Minister of Justice requests his pre-trial detention.

2. In requesting the execution of a confiscation, the minister has the right to request the seizure.

2-bis. The Minister also has the right, in cases provided for by international agreements, to request the carrying out of investigations to identify and search for assets that are located abroad and which may become the subject of an application for the execution of confiscation, as well as to request their seizure.

Law of 22 April 2005 (EAW)

Article 33³³⁹ Computability of pre-trial detention abroad. Law of 22 April 2005

1. The period of pre-trial detention suffered abroad in execution of the European arrest warrant is calculated pursuant to and for the purposes of articles 303, paragraph 4, 304 and 657 of the criminal procedure code.

³³⁷ **Art. 692. Spese della custodia cautelare.**

1. Quando l'imputato è condannato a pena detentiva per il reato per il quale fu sottoposto a custodia cautelare, sono poste a suo carico le spese per il mantenimento durante il periodo di custodia.

2. Se la custodia cautelare supera la durata della pena, sono detratte le spese relative alla maggiore durata.

[3. All'esazione si provvede secondo le norme stabilite per le spese conseguenti alla carcerazione per l'esecuzione della condanna.]

³³⁸ **Art. 745. Richiesta di misure cautelari all'estero.**

1. Se è domandata l'esecuzione di una pena restrittiva della libertà personale e il condannato si trova all'estero, il Ministro della giustizia ne richiede la custodia cautelare. (1)

2. Nel domandare l'esecuzione di una confisca, il ministro ha facoltà di richiedere il sequestro.

2-bis. Il Ministro ha altresì facoltà, nei casi previsti da accordi internazionali, di richiedere lo svolgimento di indagini per l'identificazione e la ricerca di beni che si trovano all'estero e che possono divenire oggetto di una domanda di esecuzione di confisca, nonché di richiedere il loro sequestro.

³³⁹ Art. 33. Computabilità della custodia cautelare all'estero).

1. Il periodo di custodia cautelare sofferto all'estero in esecuzione del mandato d'arresto europeo è computato ai sensi e per gli effetti degli articoli 303, comma 4, 304 e 657 del codice di procedura penale.

c) Para 2: Cross-border surrender

17 The Information from the Italian Government contain the following information:

“In accordance with Art. 33 (2) of Regulation (EU) 2017/1939 the national authorities that are competent to issue a European Arrest Warrant upon the request of the handling European Delegated Prosecutor (during investigation and trial phase) are the judges or courts with criminal proceedings pending before them. At the stage at which a custodial sentence or detention order is being enforced (stage where European Delegated Prosecutors are not involved in any way), the authority competent to issue a European arrest warrant is the public prosecutor’s office for the judge supervising enforcement.”³⁴⁰

18 The following rules may be equally useful:

Provisions for the EAW [European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA]

Law of 22 April 2005, n. 69, Provisions for conforming domestic law to the Council Framework Decision 2002/584 / JHA, of 13 June 2002, relating to the European arrest warrant and surrender procedures between Member States³⁴¹

Competent authority of the handling Member State (*listed here for the other MS*)

Article 4³⁴²**Central authority. Law of 22 April 2005**

1. In relation to the provisions of Article 7 of the Framework Decision, Italy designates the Minister of Justice as the central authority to assist the competent judicial authorities.
2. The administrative transmission and reception of European arrest warrants and official correspondence relating thereto is the responsibility of the Minister of Justice.
3. If the Minister of Justice receives a European arrest warrant from an issuing Member State, he shall transmit it without delay to the territorially competent judicial authority. If he receives a European arrest warrant from the Italian judicial authority, he transmits it without delay to the executing Member State.

³⁴⁰ Statement of the Italian Government to the EPPO, 2021, <https://www.eppo.europa.eu/sites/default/files/2021-11/16-IT.pdf>. Accessed 30 June 2025.

³⁴¹ Legge 22 aprile 2005, n. 69, Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d’arresto europeo e alle procedure di consegna tra Stati membri, Gazzetta Ufficiale n. 98 del 29 aprile 2005.

³⁴² **Art. 4. Autorità centrale.** Legge 22 april 2005

1. In relazione alle disposizioni dell’articolo 7 della decisione quadro l’Italia designa come autorità centrale per assistere le autorità giudiziarie competenti il Ministro della giustizia.
2. Spettano al Ministro della giustizia la trasmissione e la ricezione amministrativa dei mandati d’arresto europei e della corrispondenza ufficiale ad essi relativa.
3. Il Ministro della giustizia, se riceve un mandato d’arresto europeo da uno Stato membro di emissione, lo trasmette senza indugio all’autorità giudiziaria territorialmente competente. Se riceve un mandato d’arresto europeo dall’autorità giudiziaria italiana, lo trasmette senza indugio allo Stato membro di esecuzione.
4. Nei limiti e con le modalità previsti da accordi internazionali può essere consentita in condizioni di reciprocità la corrispondenza diretta tra autorità giudiziarie. In tal caso l’autorità giudiziaria competente informa immediatamente il Ministro della giustizia della ricezione o dell’emissione di un mandato d’arresto europeo. Resta comunque ferma la competenza del Ministro della giustizia ai fini di cui al comma 1 dell’articolo 23.

4. Within the limits and in the manner provided for by international agreements, direct correspondence between judicial authorities may be permitted under conditions of reciprocity. In this case, the competent judicial authority shall immediately inform the Minister of Justice of the receipt or issue of a European arrest warrant. In any case, the competence of the Minister of Justice for the purposes referred to in paragraph 1 of article 23 remains valid.

Article 28³⁴³ Jurisdiction

1. The European arrest warrant is issued:

- a) by the judge who applied the precautionary measure of custody in prison or house arrest;
- b) by the public prosecutor before the judge indicated in article 665 of the criminal procedure code who issued the order for the execution of the custodial sentence referred to in article 656 of the same code, provided that it is a sentence of no less than one year and that the execution is not suspended;
- c) by the public prosecutor identified pursuant to article 658 of the criminal procedure code, as regards the execution of personal detention security measures.

2. The European arrest warrant is sent to the Minister of Justice, who translates the text into the language of the executing Member State and transmits it to the competent authority. The issuance of the warrant is immediately notified to the International Police Cooperation Service.

Article 29 Issue of the European arrest warrant

1. The judicial authority competent pursuant to Article 28 shall issue the European arrest warrant when it appears that the accused or convicted person is resident, domiciled or residing in the territory of a Member State of the European Union.

2.³⁴⁴ When the place of residence, domicile or stay is not known and it is possible that the person is in the territory of a Member State of the European Union, the judicial

³⁴³ **Art. 28. Competenza.**

1. Il mandato d'arresto europeo è emesso:

- a) dal giudice che ha applicato la misura cautelare della custodia in carcere o degli arresti domiciliari;
- b) dal pubblico ministero presso il giudice indicato all'articolo 665 del codice di procedura penale che ha emesso l'ordine di esecuzione della pena detentiva di cui all'articolo 656 del medesimo codice, sempre che si tratti di pena di durata non inferiore a un anno e che non operi la sospensione dell'esecuzione;
- c) dal pubblico ministero individuato ai sensi dell'articolo 658 del codice di procedura penale, per quanto attiene alla esecuzione di misure di sicurezza personali detentive.

2. Il mandato d'arresto europeo è trasmesso al Ministro della giustizia che provvede alla traduzione del testo nella lingua dello Stato membro di esecuzione e alla sua trasmissione all'autorità competente. Della emissione del mandato è data immediata comunicazione al Servizio per la cooperazione internazionale di polizia.

³⁴⁴ **Art. 29. Emissione del mandato d'arresto europeo.**

authority orders the insertion of a specific alert in the SIS, in accordance with the provisions of Article 95 of the Convention of 19 June 1990, implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders, enforced by Law no. 388. An alert in the SIS is equivalent to a European arrest warrant accompanied by the information referred to in Article 30.

3. In the event that the requested person benefits from an immunity or privilege recognized by a State other than that of execution or by an international body, the judicial authority will forward the request for revocation of the privilege or exclusion of the immunity.

d) Fraud-related peculiarities

19 Fraud (*truffa*, *Codice Penale*) and other PIF Acquis offences, like corruption (cf. Article 4 PIF Directive 2017/1371/EU) as well as embezzlement – all fraud-related- are mentioned in Art. 381 CPP *expressis verbis*:

20 **Article 381 Facultative arrest in flagrante delicto**³⁴⁵

1. Officers and judicial police officers have the power to arrest anyone caught in the act of a non-culpable, committed or attempted crime, for which the law establishes the penalty of imprisonment exceeding a maximum of three years or a culpable crime [43 of the criminal code] for which the law establishes the penalty of imprisonment of not less than a maximum of five years.

2. Officers and judicial police officers also have the right to arrest anyone caught in the act of one of the following crimes:

a) embezzlement by profit from the error of others provided for by article 316 of the criminal code;

1. L'autorità giudiziaria competente ai sensi dell'articolo 28 emette il mandato d'arresto europeo quando risulta che l'imputato o il condannato è residente, domiciliato o dimorante nel territorio di uno Stato membro dell'Unione europea.

2. Quando il luogo della residenza, del domicilio o della dimora non è conosciuto e risulta possibile che la persona si trovi nel territorio di uno Stato membro dell'Unione europea, l'autorità giudiziaria dispone l'inserimento di una specifica segnalazione nel SIS, conformemente alle disposizioni dell'articolo 95 della convenzione del 19 giugno 1990, di applicazione dell'accordo di Schengen del 14 giugno 1985 relativo all'eliminazione graduale dei controlli alle frontiere comuni, resa esecutiva dalla legge 30 settembre 1993, n. 388. Una segnalazione nel SIS equivale a un mandato d'arresto europeo corredato delle informazioni di cui all'articolo 30.

3. Nel caso in cui la persona ricercata benefici di una immunità o di un privilegio riconosciuti da uno Stato diverso da quello di esecuzione ovvero da un organismo internazionale, l'autorità giudiziaria provvede a inoltrare la richiesta di revoca del privilegio o di esclusione dell'immunità.

³⁴⁵**Art. 381. Arresto facoltativo in flagranza.**

1. Gli ufficiali e gli agenti di polizia giudiziaria hanno facoltà di arrestare chiunque è colto in flagranza di un delitto non colposo, consumato o tentato, per il quale la legge stabilisce la pena della reclusione superiore nel massimo a tre anni ovvero di un delitto colposo per il quale la legge stabilisce la pena della reclusione non inferiore nel massimo a cinque anni.

2. Gli ufficiali e gli agenti di polizia giudiziaria hanno altresì facoltà di arrestare chiunque è colto in flagranza di uno dei seguenti delitti:[...] i) truffa prevista dall'articolo 640 del codice penale; [...]

- b) corruption for an act contrary to official duties provided for by articles 319 paragraph 4 and 321 of the criminal code; [...]
- i) fraud provided for by article 640 of the criminal code;
- l) embezzlement provided for by article 646 of the criminal code; [...].

5. Defence laws relating to EPPO actions concerning PIF Crime offences

a) General Role of the Defence

The Italian Criminal Procedure distinguishes between the public defender (*difensore d'ufficio*, Art. 97 para 1, 2 c.p.p.) or the previously appointed confidential counsellor (*difensore di fiducia precedentemente nominato*, Art. 96, 107 c.p.p.). The rules on defence in criminal matters, which are anchored in the *Codice di Procedural Penale* apply, like in national criminal proceedings, in EPPO criminal proceedings and the formal requirements need to be respected.³⁴⁶ The term “defensive investigations” refers to the search and identification of evidence in favor of a client³⁴⁷, can be used in EPPO proceedings as well. Art. 391 c.p.p. deals with the defendant’s right to be present and to have their defense counsel present during interrogations and other acts, ensuring the right to a fair trial, especially concerning the defense’s ability to conduct preventive investigations (Art. 391-bis, 391-quater, 391-sexies) to collect evidence before formal proceedings conclude).³⁴⁸

aa. Art. 335 CPC

If a person gets to know that he/she is a suspect in an EPPO investigation in accordance with Art. 335 CPC, she/he has a right to get to know, from the locally competent prosecution office of the EPPO what the EDPs have investigated.

bb. Invitation of the EDP to present oneself acc. to Art. 375 CPC

If a person is invited by the EDP to present itself (*l’invito a presentarsi*) it becomes aware of an investigation or a certain measure in another way.³⁴⁹ Art. 375 CPC explains


³⁴⁶ See instead of all others in-depth Canestrini 2022, pp. 155–161; see Gialuz, Lupária and Scarpa 2014, p. 306–312 and see the Study of Fair Trials <https://www.fairtrials.org/app/uploads/2022/01/ITALY-Mar-2016-Printer-Friendly.pdf> containing key terms in the investigative defence phase; easy to read in English on defence rights see <http://defensewiki.ibj.org/index.php/Italy>; on formal matters see Court of Cassation, Judgment No. 17225 of March 14, 2023 on the failure to draft the report referred to in Article 391-ter of the Code of Criminal Procedure, which can lead to inadmissibility of the evidence in favour for the accused or suspect. This pinpoints us to the fact that everywhere in Europe lawyers have strong formal obligations in criminal procedure, which are even more important in the age of AI and digitalization and generative technical apps or software; everything must be checked at least twice.

³⁴⁷ This is partly a result from the change of the 1989 new criminal procedure code, which lead to a change, i.e. “previous inquisitorial court system has been replaced by a prevalently accusatory system”, see <https://www.dogma.it/en/defensive-investigations>. Accessed 31 December 2025.

³⁴⁸ Gialuz, Lupária and Scarpa 2014, pp. 306–312.

³⁴⁹ See Tripodi 2021.

that the invitation also contains a **summary of the facts** as they emerge from the investigations carried out up to that point by the EDP.

 **Nota bene:** Art. 375 para 4. The invitation to appear shall be sent **at least three days before the date set for the appearance**, unless the public prosecutor's office decides, for reasons of urgency, to shorten the period, provided that there is still the necessary time for the appearance.

b) Specialised legal law firms

- 4 Special legal law firms for investigations in criminal matters (and even EPPO investigations) might be requested via the Italian Bar Association. More and more firms specialise on EPPO and OLAF matters in Italy lately.³⁵⁰ The Union of Criminal Law Specialists (*Unione delle Camere Penali Italiane*) may be asked for options as well.³⁵¹

c) Defence in the investigation phase

- 5 The defence lawyer needs to be included into a criminal investigation proceeding by the EDP, if the EDP intends to hear a person as suspect in an EPPO criminal case (Art. 364, 375 CPC).

6 Article 364 CPC Appointment and assistance of the defender

1. The public prosecutor, if he has to carry out an interrogation, or inspection, identification of persons or confrontation which must participate in the person under investigation, invites him to appear in accordance with Article 375.³⁵²

³⁵⁰ See <https://www.pucciopenalisti.it/en/assistance-in-transnational-matters/>. Puccio Penalisti Associati e.g. provides support near Milan, where one EDP Center is located. The Studio Armella is enough law firm, which dealt with OALF Investigations already <https://www.studioarmella.it/2023/03/15/news/dogane/posticipata-lentrata-in-igore-dei-nuovi-tracciati-per-export-e-transito-copy-2/>. Accessed 31 December 2025.

³⁵¹ See <https://www.camerepenali.it/>. Accessed 30 June 2025.

³⁵² **Art. 364. Codice di Procedura Penale** Nomina e assistenza del difensore

1. Il pubblico ministero, se deve procedere a interrogatorio, ovvero a ispezione (, a individuazione di persone) o confronto cui deve partecipare la persona sottoposta alle indagini, la invita a presentarsi a norma dell'articolo 375.

2. La persona sottoposta alle indagini priva del difensore e' altresì avvisata che e' assistita da un difensore di ufficio, ma che puo' nominarne uno di fiducia.

3. Al difensore di ufficio o a quello di fiducia in precedenza nominato e' dato avviso almeno ventiquattro ore prima del compimento degli atti indicati nel comma 1 e delle ispezioni a cui non deve partecipare la persona sottoposta alle indagini.

4. Il difensore ha in ogni caso diritto di assistere agli atti indicati nei commi 1 e 3, fermo quanto previsto dall'articolo 245.

5. Nei casi di assoluta urgenza, quando vi e' fondato motivo di ritenere che il ritardo possa pregiudicare la ricerca o l'assicurazione delle fonti di prova, il pubblico ministero puo' procedere a interrogatorio, a ispezione (, a individuazione di persone) o a confronto anche prima del termine fissato dandone avviso al difensore senza ritardo e comunque tempestivamente. L'avviso puo' essere omesso quando il pubblico ministero procede a ispezione e vi e' fondato motivo di ritenere che le tracce o gli altri effetti materiali del reato possano essere alterati. E' fatta salva, in ogni caso, la facolta' del difensore d'intervenire.

2. The person under investigation without a lawyer is also advised that she is assisted by an official defender, but that he can appoint one he trusts.
3. To the defender of office or to the one previously trusted nominated is given notice at least twenty-four hours before completion of the acts indicated in paragraph 1 and of the inspections which the person under investigation shall not participate in.
4. The defender has in any case the right to attend the procedure indicated in paragraphs 1 and 3, without prejudice to the provisions of article 245.
5. In cases of absolute urgency, when there is well-founded reason for believe that the delay could affect the search or the assurance of the sources of evidence, the prosecutor can carry out an interrogation, inspection, identification of persons or to confrontation even before the deadline set by giving some notice to the defender without delay and in any case promptly. The notice can be omitted when the prosecutor proceeds to inspection and there is good reason to believe that the traces or the other material effects of the crime may be altered. It's done save, in any case, the right of the defender to intervene.
6. When it proceeds in the manner provided for by paragraph 5, the public prosecutor must specifically indicate, under penalty of nullity, the reasons of the exemption and the terms of the notice.
7. It is forbidden for those who take part in the acts to make signs of approval or disapproval. When he witnesses the fulfilment of the deeds, the defender can present requests to the public prosecutor, observations and reservations which are mentioned in the minutes.

Nota bene: At least **twenty-four hours before the completion** of the interrogation, an inspection, an identification or a confrontation and the controls in which the person subject to the investigation is not allowed to participate, the **public defender or the previously appointed confidential counselor shall be notified.**

aa. The Input from the Regulation 2017/1939

(1) Access to national case file

The EDP is a prosecutor **vested with special powers** according to the Italian **EPPO Adoption Law** (see above A. III.). Still the EDP has, like national prosecutors, **access to their case file**³⁵³, which is from the moment of starting such a file an EPPO file. **Article 112 of the Constitution** of the Republic of Italy and articles **50–54 of the Italian Codice di procedura penale**, First book, Chapter I, Tide II relate to the role of the prosecution. The prosecution uses the **file** to document the investigation. This **contains**

6. Quando procede nei modi previsti dal comma 5, il pubblico ministero deve specificamente indicare, a pena di nullità, i motivi della deroga e le modalità dell'avviso.

7. E' vietato a coloro che intervengono agli atti di fare segni di approvazione o disapprovazione. Quando assiste al compimento degli atti, il difensore puo' presentare al pubblico ministero richieste, osservazioni e riserve delle quali e' fatta menzione nel verbale.

³⁵³ See Colli et al. 2022, pp. 663 et seq.

information on the accusation, any evidence collected (see Art. 357 obligation for the police staff to document), personal data and all reports and interrogations of the accused.

- 7 The **defence counsel** may file a motion under Art. 391-septies. This gives him access to places where the public cannot have access. The judge must make a decision.
- 8 Art. 366 CPC contains a right for access and to request information from the EDPs Local Offices (see above → The EPPO in Italy).

9 **Article 366**³⁵⁴

1. Subject to special provisions, the records of the acts carried out by the prosecutor and the criminal police, which the defence counsel is entitled to assist, are deposited in the secretariat of the public prosecutor at the latest on the third day after the completion of the deed, with the power for the defence counsel to use them within the next five days and make a copy. If no notice of the completion of the instrument has been given, the defendant will be promptly notified of the notice of filing and the period will begin upon receipt of the notice. The defender has the right to examine the confiscated things in the place where they are located and, in the case of documents, to request a copy.

2. The Public Prosecutor's Office may, by reasoned decision and for serious reasons, order that the filing of the documents referred to in paragraph 1 and the exercise of the right referred to in the third sentence of the same paragraph be delayed for a maximum of thirty days, without prejudice to any other activity of the defence counsel. The person under investigation and the defence counsel may appeal against the prosecutor's decision to the judge, who shall proceed in accordance with Article 127.

- 10 Typically **access to the file** is requested in order to identify what the accusations are. Then the lawyer may conduct an undocumented interview with the suspect and inform the client about the situation. The aim will be to find a defence strategy, which is even better if the defender has more information on the whole process of a certain conduct or *modus operandi* and an authorized private investigator might support in these cases.³⁵⁵

³⁵⁴ **Art. 366.**

1. Salvo quanto previsto da specifiche disposizioni, i verbali degli atti compiuti dal pubblico ministero e dalla polizia giudiziaria ai quali il difensore ha diritto di assistere, sono depositati nella segreteria del pubblico ministero entro il terzo giorno successivo al compimento dell'atto, con facoltà per il difensore di esaminarli ed estrarne copia nei cinque giorni successivi. Quando non è stato dato avviso del compimento dell'atto, al difensore è immediatamente notificato l'avviso di deposito e il termine decorre dal ricevimento della notificazione. Il difensore ha facoltà di esaminare le cose sequestrate nel luogo in cui esse si trovano e, se si tratta di documenti, di estrarne copia.

2. Il pubblico ministero con decreto motivato, può disporre, per gravi motivi, che il deposito degli atti indicati nel comma 1 e l'esercizio della facoltà indicata nel terzo periodo dello stesso comma siano ritardati, senza pregiudizio di ogni altra attività del difensore, per non oltre trenta giorni. Contro il decreto del pubblico ministero la persona sottoposta ad indagini ed il difensore, possono proporre opposizione al giudice, che provvede ai sensi dell'articolo 127.

³⁵⁵ Art. 222 c.p.p. in combination with Art. 391bis para 1, 391sexies to septies even allows access to places to identify things in favor for the suspect, Gialuz, Lupária and Scarpa 2014, p. 306–312.

(2) Access to the mirrored EPPO case file

The EPPO Regulation is quite unclear in this regard. Art. 45 relates to the Case Management System, a digital information database between the EDPs and the EPPO in Luxembourg, which contains a mirrored file of the national EDPs. This file can be accessed by the Chambers and the EPs. Access to the Case-Management System is not granted for Defence lawyers. **11**

bb. Defence while investigation is under-way, Art. 28–33 EPPO Regulation

If the prosecutor changes, after hearing what the person indicted and accused says in court, the criminal offence, it is questionable whether his/her rights from Directive 2012/13 (EU) are infringed.³⁵⁶ **12**

(1) In cases involving investigative measures of Art. 30 EPPO-Regulation

Art. 356 CPC (*Assistenza del difensore*) offers the defence lawyer a right to be present if the Italian EDP gets access to a certain documents, premises, IT services, computers etc (see above → Search measures; and see Art. 391 et seq.). This formal right is partly an expression of rights of the suspect, which are guaranteed within the Italian Constitution. **13**

For most investigation measures, which an Italian EDP might order or request according to national law references in Art. 30 EPPO Regulation (above → Investigation measures (*Misure investigative e altre misure*)) the defence lawyer may according to Article 97, para 3 CPC exercise his/her the right to assist in the execution of the measure of the EDP (in order to protect the rights of a suspected person). **14**

(2) Defence in Case of Arrest and Pre-Trial Detention, Art. 33 EPPO Regulation

The EPPO regularly arrests suspects on the basis of Art. 384 CPC (see above → Para 1: Provisions for arrest and pre-trial detention). Art. 389 CPC contains cases of immediate release of those arrested or detained and must be applied by a defence lawyer if e.g. the false person was arrested on an EPPO Action Day. **15**

³⁵⁶ See ECJ, Case C-646/17 Criminal proceedings, Against Gianluca Moro.

d) Finalisation of the Investigation: Defence in Indictment Phase and the Trial Phase

16 The Defence counsel of the suspect must be informed by the EDP in accordance with Artt. 4156 CPC.

17 **Article 416**

(1) The request for indictment is filed by the public prosecutor in the court registry.

The request for indictment is void if it is not preceded by the notice envisaged by article 415bis, as well as by the invitation to appear for questioning pursuant to article 375, paragraph 3, if the person under investigation has requested to be subjected to questioning within the term referred to in article 415bis, paragraph 3.

(2) The file containing the crime report, the documentation relating to the investigations carried out [357–373] and the minutes of the acts carried out before the judge for preliminary investigations [294, 401] are sent with the request. The corpus delicti and the things pertaining to the crime [253] are attached to the file, if they do not have to be kept elsewhere [259]. 2-bis.

18 After the closure of the investigation, the defence lawyer needs to install a **process strategy** for his/her defendant(s) and plan on how to use the information obtained during the investigation phase of the EDP in order to guarantee the respect of the fundamental rights of the accused e.g. by pleading for an acquittal if the evidence collected by the EDPs is not sufficient or misleading, ambiguous, unclear.

19 At the **end of the criminal trial** in PIF *Acquis* matter, the pleas of both parties, the EDPs of the EPPO and the defence lawyer are waiting. After this point it is in the hands of the independent Italian courts to judge about the case, the conduct and the pleas. A decision might, as mentioned at the beginning of the Italian Manual Chapter (above General Introduction), take a long time in Italy – even if Italy is currently redesigning its capacity to judge faster, which was requested by the EU Commission in the 2022 Rule of Law Report.

20 The chapter does not end here and is not exhaustive, but only a first introduction for mainly foreign EDPs as Italian EDPs know the Italian laws. Thus it is now devoted to OLAF investigations instead of EPPO Investigations, which are administrative in nature but can also have an impact on criminal investigations or even (EPPO initiated) trials in Italy according and in connection to Art. 11 OLAF Regulation. The main questions will be: How are the references of the OLAF Regulation to the national law to be understood and do EDPs, SNEs, OLAF Investigators look through the jungle of provisions? The volume chapter, which is comprehensive, at least tries to present the most important provisions that are referenced by the OLAF Regulation in abstract ways.

C. OLAF-Regulation (EU, EURATOM) No 883/2013

The OLAF Regulation is a source of **EU-secondary law** like the EPPO Regulation, but establishing and regulating the special work i.e. investigative measures to fight and uncover fraud against the Unions' budget by means of EU **administrative and disciplinary laws** with special sanctions instead of criminal investigations with potential criminal sanctions following eventually an EPPO indictment. 1

I. Investigation Powers Related to OLAF in Italy

But, let us remember the CJEU recognizes that while OLAF has a mandate under EU law to conduct investigations, its actual exercise of **coercive investigative measures** (e.g., searches, on-the-spot checks) in case of resistance is governed by **national procedural rules** as well. Essentially, OLAF acts are or must be in many situations determined by secondary EU law subject to the “rules and practice of the Member State concerned”. 2

1. General Remarks and Historical Summary

OLAF's task and role as well as its actions are thus determined primarily by Union law and parts of these articles needed to be changed due to the establishment of the EPPO (see above → Part A). Still, originally the **history of OLAF** can be traced back to the early 2000s and its predecessor UCLAF and this history reveals the reasons for its tasks.³⁵⁷ 3

a) OLAF's Role and Task

Today, OLAF has a renewed role within the changed (new) **anti-fraud architecture** of the Union in the 2020/30s and is still an important actor against fraud within the Multi-annual framework legislation and the Union's policies, which depend on the action of the Member States and the agreements concluded on the political levels. 4

aa. OLAF in Italy

OLAF in Italy has played a major role in the fight against fraud with EU structural funds since the beginning of the 21st century, but even well before this time **UCLAF and since 1998** the fight against fraud was institutionalized not only in the European Communities and then the EU, but Italian Governments put great effort in establishing an internal system, which OLAF could rely on for its own investigations, which is shown in Reports of the Italian AFCOS and OLAF Reports from the early 2000s (see below). 5

³⁵⁷ See in-depth Hauck 2025b, The PIF Directive; Hauck 2026a, The OLAF Regulation, Commentary on Art. 1; Hauck 2025a Fraud in Europe, Chronology Part 3 and 4.

bb. Transmission of Information to OLAF

- 6 Italian authorities became more and more aware of OLAF and reported, according to statutory law incidences and suspicions of irregularities to OLAF.
- 7 In addition to that OLAF and its **investigators** nowadays **shall follow** internal guidelines³⁵⁸, manuals on procedures³⁵⁹ reports and working arrangements with union partners³⁶⁰ as well as Administrative Cooperation Agreements (ACAs) with national partners, EU external actors³⁶¹. On-top OLAF issues compendia, researches itself, organizes meetings and conferences and workshops for its national partners. All of these non-binding guides and handbooks might be useful in the course of investigations.³⁶² The statistics on latest actions and the past year can be deduced from the OLAF Reports, equal to the new EPPO’s annual report and the PIF Report, which is issued by the EU Commission in close cooperation with OLAF, IBOAs and the EPPO as well as the input from ECA and national AFCOS, governments and researchers.

b) Accommodation of OLAF within the EU’s Anti-Fraud Architecture

- 8 OLAF is well accommodated in the Union anti-fraud architecture these days and the academic research is extensive and long lasting since the 2000s.³⁶³ Last decade’s landmark judgment *Sigma Orionis SA vs European Commission*, decided by the European General Court³⁶⁴, has shown the importance of the **application of national law** and Union law³⁶⁵ in relation to external investigations of OLAF.³⁶⁶ In the light of this jurisprudence the **resistance to the actions of OLAF**, in order to awaken national law, might be a defence strategy that **economic operators** use and was still unresearched. Because

³⁵⁸ EU Commission, OLAF 2021a; EU Commission, OLAF 2021b; EU Commission, OLAF 2016. See all translation: https://anti-fraud.ec.europa.eu/guidelines-investigations-olaf-staff_en. Accessed 30 June 2025.

³⁵⁹ Brüner et al. 2009, whereby it is unclear if certain Manuals are really still used by investigators and the Office staff.

³⁶⁰ OLAF, Working Arrangement between EPPO and OLAF, Point 4: “Exchange of information”, 4.5 and 4.6 (cross double check between the databases for a PIF offence action), 5 („Mutual Reporting and transmission of potential cases“), 5.1, 5.1.1. European Commission – “Agreement establishing the modalities of cooperation between the European Commission and the European Public Prosecutor’s Office” 18 June 2021, Art 5 para 1, 4, 5 (“Reporting by the Commission”) in combination with Annex I Contact points: “information will be transmitted via the head of OLAF to the head of operation at EPPO/central office”, Annex III.A (“Information on the Initiation of an Investigation – template”).

³⁶¹ Prosecution Office of Hungary and OLAF 2022.

³⁶² See European Commission 2011; EU Commission, OLAF 2017; EU Commission (OLAF), 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, https://www.esfondi.lv/upload/02-kohezijas_fonds/Lielie_projekti/EK_vadl_par_viltotu_dok_identif_EN.pdf Accessed 31 December 2025; EU Commission and Directorate-General (n.d.); EU Commission and DG Policy U 2 (n.d.).

³⁶³ Brüner 2001, pp. 17–26; Brüner et al. 2009; Brüner 2008, pp. 859–872; Gellert 2009, pp. 85–88.

³⁶⁴ GC (aka CFI), Case T-48/16, 3.5.2018, *Sigma Orionis SA v. Commission*, paras. 70 et seq., 80–81 published in the electronic Reports of Cases (Court Reports - general) and in the OJ, 01/06/2018.

³⁶⁵ See De Bellis 2021, pp. 431 et seq.; Herrinfeld (n.d.), pp. 426 et seq.; recently Wouters 2020, pp. 132 et seq.

³⁶⁶ De Bellis 2021, pp. 431 et seq.; see OLAF Website, List of rulings of the ECJ of the EU concerning OLAF, https://anti-fraud.ec.europa.eu/about-us/legal-background/list-rulings-court-justice-eu-concerning-olaf_en. Accessed 30 June 2025.

if this is the case, OLAF has to rely on national homologue investigators and thus as well limitations, thresholds and conditions of national law i.e. investigative powers in various areas of budget spending and structural funds (direct management) and revenue-related obligations (indirect management).

c) Current Challenges for OLAF and Amendments (Regulation 2020/2023)

Furthermore, current debates evolve around the effectiveness of investigations with regard to digital evidence by virtue of the **Regulation 2185/96**, which stems in parts from a more analogue society where investigators relied on analogue evidence³⁶⁷ – today they need **access to digital (forensic evidence)**.³⁶⁸ More and more questions are raised if the analogue society in law enforcement and the area of criminal justice is a problem of the digital age and presents obstacles to effective investigations.³⁶⁹ **The access to bank accounts and registers** is highly important for OLAF investigators as well as their national homologues. The relationship to the EPPO, especially the regional centres of the EDPs in the present country should be close. In addition to that the external investigations require a good coordination, which shall be governed by the relevant AFCOS (see below Art. 12a OLAF Regulation). 9

Another question and debate has ever since existed concerning the **reports of OLAF** (cf. Art. 11), which can and shall **constitute evidence even in national criminal trials**. They concern EPPO cases (see Art. 23–28 EPPO Regulation) or cases below the thresholds for which the EDPs could exercise their competence and jurisdiction on behalf of the EPPO. This area has been well researched by *Luchtman/Vervaele/Ligeti* and others in OLAF studies from the last decade, which we can refer to.³⁷⁰ 10

d) Contents

Part C alike to the first Part B on the EPPO and its investigative powers, presents finally like in the other volumes a **collection of the relevant laws** – in some volumes we mentioned as well the recently adopted on-the-spot checks laws (in relation to Regulation (EC) 2185/96). The **relevance of national law to investigations of OLAF Units and investigative powers is highlighted and we use**, not exhaustive, as well e.g. examples from case law and trials, which relied upon evidence gathered by OLAF. 11

³⁶⁷ See Carrera et al. 2021.

³⁶⁸ See recently in-depth studied by in an outstanding research project giving insights and providing useful points for the present collection of the relevant laws and jurisprudence as well as further studies Caianiello and Camon 2021.

³⁶⁹ Ibid, pp. 237 et seq. and pp. 252 saying it needs more uniform national legal provisions in the future.

³⁷⁰ See Luchtman and Vervaele 2017.

2. Article 1 Objectives and tasks and Article 2 Definitions

- 12** According to the **wording of Art. 1 OLAF**³⁷¹ conducts administrative investigations into fraud, corruption, and other illegal activities affecting the EU's finances. It may investigate EU institutions, bodies, offices, and agencies, including their officials and staff, in cases of serious misconduct that may lead to disciplinary or criminal proceedings. OLAF thus helps EU Member States coordinate anti-fraud efforts, promotes the exchange of best practices, and supports the development of prevention strategies. It also supports voluntary joint **anti-fraud actions** among Member States.
- 13** The **legal safeguards for OLAF's work** include the respect for existing legal frameworks, including the protocol No 7 on EU privileges and immunities (see above Art. 29 EPPO Regulation), the Statute for Members of the European Parliament and EU data protection laws (Regulations 2016/679 and 2018/1725) apply. OLAF works closely with the EPPO (see below Art. 12e), ensuring cooperation, information exchange, and complementary action to avoid duplication and strengthen protection of EU financial interests.
- 14** Member States and EU bodies can establish administrative arrangements with OLAF to support investigations and share information. These are non-binding agreements that facilitate cooperation.
- 15** The **definitions from Article 2**³⁷² are essential to work on OLAF cases. Most important for any legal assessment or final report or recommendation are: Financial interests of the Union means all revenue, expenditure, and assets under the EU and related budgets. Irregularity is defined in Regulation 2988/95. Fraud, corruption, and other illegal activity includes all conduct that damages EU financial interests, including irregularities. Administrative investigations are "**non-criminal**" **inspections** and checks by OLAF. Person concerned is a person or company under OLAF investigation. An economic operator is defined in anti-fraud regulations. And administrative arrangements mean technical or operational agreements with no added legal obligations. A member of an institution includes MEPs, Commissioners, judges, and other main EU officeholders.

³⁷¹ See <http://data.europa.eu/eli/reg/2013/883/oj>.

³⁷² For the text see <https://eur-lex.europa.eu/eli/reg/2013/883/oj/eng> Art. 2.

3. Article 3 External investigations

3. Article 3 External investigations	329	(General Tax Code)	344
a) On the spot-checks and inspections – Renouncing the applicable national law – Para 2, 4	334	(bb) External audit (General Tax Code)	344
b) Resistance by the economic operator vs. law enforcement and effective investigations, para 6 or the new model and the relevance of resistance or conformity of the Economic Operator	334	(cc) Tax and customs investigation (Customs Code/General Tax Code).....	344
c) The basic principle of conformity to Regulations 2185/96 and 883/2013	335	(dd) Fiscal supervision	351
aa. Submission: Compliance with Union law	335	(b) Administrative provisions in the area of structural funds and internal policies (interne Politiken) = expenditure	352
bb. Resistance: Assistance in conformity with national procedural rules applicable	335	(aa) Structural funds	352
d) Competent authorities....	335	(bb) Internal policies	355
e) National law and “on-the-spot-checks and inspections” of OLAF	340	(c) Administrative provisions in the area of the common organization of the markets= expenditure	356
aa. Administrative procedure in general	341	(d) Administrative provisions in the area of direct expenditure.....	356
(1) Administrative provisions.....	344	(2) Investigative powers	362
(a) Administrative provisions in the area of customs duties and value added tax (VAT) = revenue.....	344	(a) Investigative powers in the area of customs duties and VAT (General Tax Code).....	362
(aa) Principle of investigation		(aa) VAT area ...	362

<ul style="list-style-type: none"> (bb) Custom Duties area375 (b) Investigative powers in the area of structural funds and internal policies.....379 (c) Investigative powers in the area of common market organisations..384 (d) Investigative powers in the area of direct expenditure388 (3) Protection of information395 <ul style="list-style-type: none"> (a) Banking Secrecy.395 (b) Tax secrecy (General Tax Code)396 (c) State and Administrative secrecy (Administrative laws) 396 (d) Data secrecy (Data protection laws, Customs Code, General Tax Code)397 (e) Official secrecy (Customs Code, General Tax Code)404 (4) Investigation reports (Customs Code, General Tax Code)406 (5) Preservation of Evidence (Customs Code, Tax Decrees).....407 f) A closer look at single measures.....407 <ul style="list-style-type: none"> aa. Interviewing/ Questioning of “persons concerned” (in relation to suspects/ defendants).....407 	<ul style="list-style-type: none"> bb. The taking of statements from Economic Operators 408 cc. Interviewing/Questioning of witnesses..... 409 dd. Searches and Inspections by national authorities and OLAF officials to discover irregularities in Italy, Art. 19 et seq. Presidential decree No 43 of 23 January 1973 (Customs area), Art. 33 Presidential decree No 600 29 September 1973 (VAT and tax area) 409 <ul style="list-style-type: none"> (1) General remarks .410 (2) Formal requirements 410 (3) Substantive requirements 415 ee. Seizure of other evidence during on-the-spot-checks..... 417 ff. The seizure of digital forensic evidence including bank account information 418 gg. Acquisition of digital evidence 420 hh. Digital forensic operations within inspections or on-the-spot checks..... 421 g) National procedural rules for “checks and inspections” by the assisting national authority 422 h) Cooperation and mutual assistance agreements..... 423
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[...] 2. The Office shall *carry out on-the-spot checks and inspections in accordance with this Regulation and, to the extent not covered by this Regulation, in accordance with Regulation (Euratom, EC) No 2185/96.*

4. Where, in accordance with paragraph 3 of this Article, the *economic operator concerned submits* to an on-the-spot check and inspection authorised pursuant to this Regulation, Article 2(4) of Regulation (EC, Euratom) No 2988/95, the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96 and Article 7(1) of Regulation (Euratom, EC) No 2185/96 *shall not apply insofar as those provisions require compliance with national law* and are capable of restricting access to information and documentation by the Office to the same conditions as those that apply to national administrative inspectors.

5. At the request of the Office, the *competent authority of the Member State* concerned shall, without undue delay, provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2).

The *Member State concerned shall ensure*, in accordance with Regulation (Euratom, EC) No 2185/96, that the *staff of the Office are allowed access to all information, documents and data relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that the staff are able to assume custody of documents or data to ensure that there is no danger of their disappearance.* Where privately owned devices are used for work purposes, those devices may be subject to inspection by the Office. The Office shall subject such devices to inspection only under the same conditions and to the same extent that national control authorities are allowed to investigate privately owned devices and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

6. Where the staff of the Office find that an *economic operator resists* an on-the-spot check and inspection authorised pursuant to this Regulation, namely where the economic operator refuses to grant the Office the necessary access to its premises or any other areas used for business purposes, conceals information or prevents the conduct of any of the activities that the Office needs to perform in the course of an on-the-spot check and inspection, the *competent authorities, including, where appropriate, law enforcement authorities of the Member State concerned shall afford the staff of the Office the necessary assistance so as to enable the Office to conduct its on-the-spot check and inspection effectively and without undue delay.*

Article 2(4) of Regulation (EC, Euratom) No 2988/95

Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96

~~On-the-spot checks and inspections shall be carried out on the Commission's authority and responsibility by its officials or other servants, duly empowered, hereinafter called 'Commission inspectors'. Persons placed at the disposal of the Commission by the Member States as national experts on secondment may assist in such checks and inspections.~~

~~Commission inspectors shall exercise their powers on production of a written authorisation showing their identity and position, together with a document indicating the subject matter and purpose of the on-the-spot check or inspection.~~

~~Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the Member State concerned.~~

Article 7(1) of Regulation (Euratom, EC) No 2185/96

Commission inspectors shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned which are required for the proper conduct of the on-the-spot checks and inspections. They may avail themselves of the same inspection facilities as national administrative inspectors and in particular copy relevant documents.

On-the-spot checks and inspections may concern, in particular:

- professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements held by economic operators,
- computer data,
- production, packaging and dispatching systems and methods,
- physical checks as to the nature and quantity of goods or completed operations,
- the taking and checking of samples,
- the progress of works and investments for which financing has been provided, and the use made of completed investments,
- budgetary and accounting documents,
- the financial and technical implementation of subsidized projects.]

When providing assistance in accordance with this paragraph or with paragraph 5, the competent authorities of Member States ***shall act in accordance with national procedural rules applicable to the competent authority concerned. If such assistance requires authorisation from a judicial authority in accordance with national law***, such authorisation shall be applied for.

10. As part of its investigative function, the Office shall carry out the checks and inspections provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9(2) of that Regulation in Member States and, ***in accordance with cooperation and mutual assistance agreements and any other legal***

instrument in force, in third countries and on the premises of international organisations.

12. Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an external investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the competent authorities of the Member States concerned and, where necessary, the institutions, bodies, offices and agencies concerned.

Without prejudice to the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No 2988/95, the competent authorities of the Member States concerned shall ensure that appropriate action is taken, in which the Office may take part, **in accordance with national law**. Upon request, the competent authorities of the Member States 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.

If there is any **signal, information** on the basis of the Regulation (EC, Euratom) 2988/95, any report on irregularities, OLAF will probably (need to) consider gathering evidence at the place of the **suspected irregularity** or wrongdoing.³⁷³ Art. 5 para 2 OLAF Reg. stipulates that “[t]he decision to open an investigation shall be taken by the Director-General, acting on his or her own initiative or following a request from an institution, body, office or agency or from a Member State.” Union law provides for many reporting obligations and delegated acts on the management of irregularities and information about suspicious conduct.³⁷⁴ **1**

In some cases (see below) the national law will become very relevant to carry out on-the-spot checks. Due to the amendments to the OLAF Regulation at the end of 2020 it **2**

³⁷³ *Dipartimento per la politiche europee*, Comitato per la lotta contro le frodi nei confronti dell’Unione europea, Linee guida sulle modalità di comunicazione alla Commissione europea delle Irregolarità e Frodi a danno del bilancio europeo [Guidelines on how to notify the European Commission of irregularities and fraud to the detriment of the European budget], Rome, 2013, 2020.

³⁷⁴ See e.g. Commission Delegated Regulation (EU) 2015/1970 of 8 July 2015 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund, OJ L 293, 10.11.2015, pp. 1–5.

Article 2 Definitions

The definitions in Regulation (EU) No 1303/2013 shall apply. In addition, for the purposes of this Regulation:

(a) ‘suspected fraud’ means an irregularity that gives rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in Article 1(1)(a) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests;

(b) ‘primary administrative or judicial finding’ means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.

is important to consider the restrictive role of OLAF, which is dominated by the administrative law on investigations i.e. the rules that refer to these kind of investigations on Union level as well as in the concerned Member State.³⁷⁵

- 3 On-the-spot checks have been discussed in the last decade quite thoroughly³⁷⁶, but not enough for all countries. For Italy, it is now worth taking a closer look at the applicable provisions. In respect to on-the-spot checks it was already stressed in 2011, that:

“With regard to the operational practice shared between the Guardia di Finanza Corps and OLAF, particular importance is attached to “on-the-spot checks” ex Regulation (EC) 2185/1996 in relation to which assistance is usually requested (even though OLAF is not obliged to cooperate directly with national Authorities) as well as to frequent information-sharing and operational meetings and to an intensive and constant exchange of data for anti-fraud purposes.”³⁷⁷

a) On the spot-checks and inspections – Renouncing the applicable national law – Para 2, 4

- 4 The national law is renounced if the economic operator, the beneficiary, the grant recipient etc. submits to the investigation of the Office. In this case Union law applies. Assistance needed, competent authorities and access to information in the Member States, para 5
- 5 In the case that Union law applies, OLAF may need the help and information from national authorities in the Member states (managing authorities, control bodies, customs and tax offices, etc.).

b) Resistance by the economic operator vs. law enforcement and effective investigations, para 6 or the new model and the relevance of resistance or conformity of the Economic Operator

- 6 If the economic operator, the beneficiary, the grant recipient etc. resists this conduct has an effect on the applicability of law. The ECJ rules in *Sigma Orionis* that national law applies in the case of resistance, which means that the investigations need to be in conformity with the national law applicable in similar national investigations.

³⁷⁵ See Bianchi 2021, pp. 79 et seq.

³⁷⁶ See Bovend’eerdt 2018.

³⁷⁷ European Council 2011, p. 68.

c) The basic principle of conformity to Regulations 2185/96 and 883/2013

aa. Submission: Compliance with Union law

In the case of compliance of an Italian Economic Operator Union law applies, thus the Regulation allows OLAF officials to conduct on-the-spot checks without prior information of national authorities. 7

bb. Resistance: Assistance in conformity with national procedural rules applicable

Does the participant, the personal or Economic operator concerned resist, the Regulation indicates that OLAF has to follow national law and inform national authorities that can provide assistance in conformity with national procedural rules applicable.³⁷⁸ 8

d) Competent authorities

Already a report of the European Council outlined in 2011, which bodies interact with OLAF and cooperate with its Seconded national experts, OLAF investigators, Accounts, Audit Specialists or Forensic Staff, Unit Investigators: 9

“The Italian agencies cooperating with OLAF, within the framework of the relevant competence, are the Guardia di Finanza Corps, the Customs Agency, the Carabinieri Corps and the Polizia di Stato.”³⁷⁹



Nicolicchia has once outlined, too which bodies are competent for national administrative proceedings in the area of fraud. This is the 10

“[...] body (*Guardia di Finanza*) responsible for conducting assessments (the powers of the customs agency (*Agenzia delle Dogane*) and [the] so-called state monopolies, or *Monopoli di Stato* [...]).”³⁸⁰

From our point-of-view we can still add the AGE, which is competent for funds and irregularities in the agricultural sector, see → LAW 23 December 1986, n. 898 Conversion into law, with amendments, of the decree-law no. 701, containing urgent measures regarding the control of Community aid for the production of olive oil. Administrative and criminal sanctions relating to Community aid to the agricultural sector.³⁸¹ 11

³⁷⁸ ECJ, Case T-48/16 *Sigma Orionis v the Commission*, Margin Number 112: “Finally, it should be noted that, according to the rules applicable to the actions carried out by OLAF, the requirement to obtain a judicial 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.”

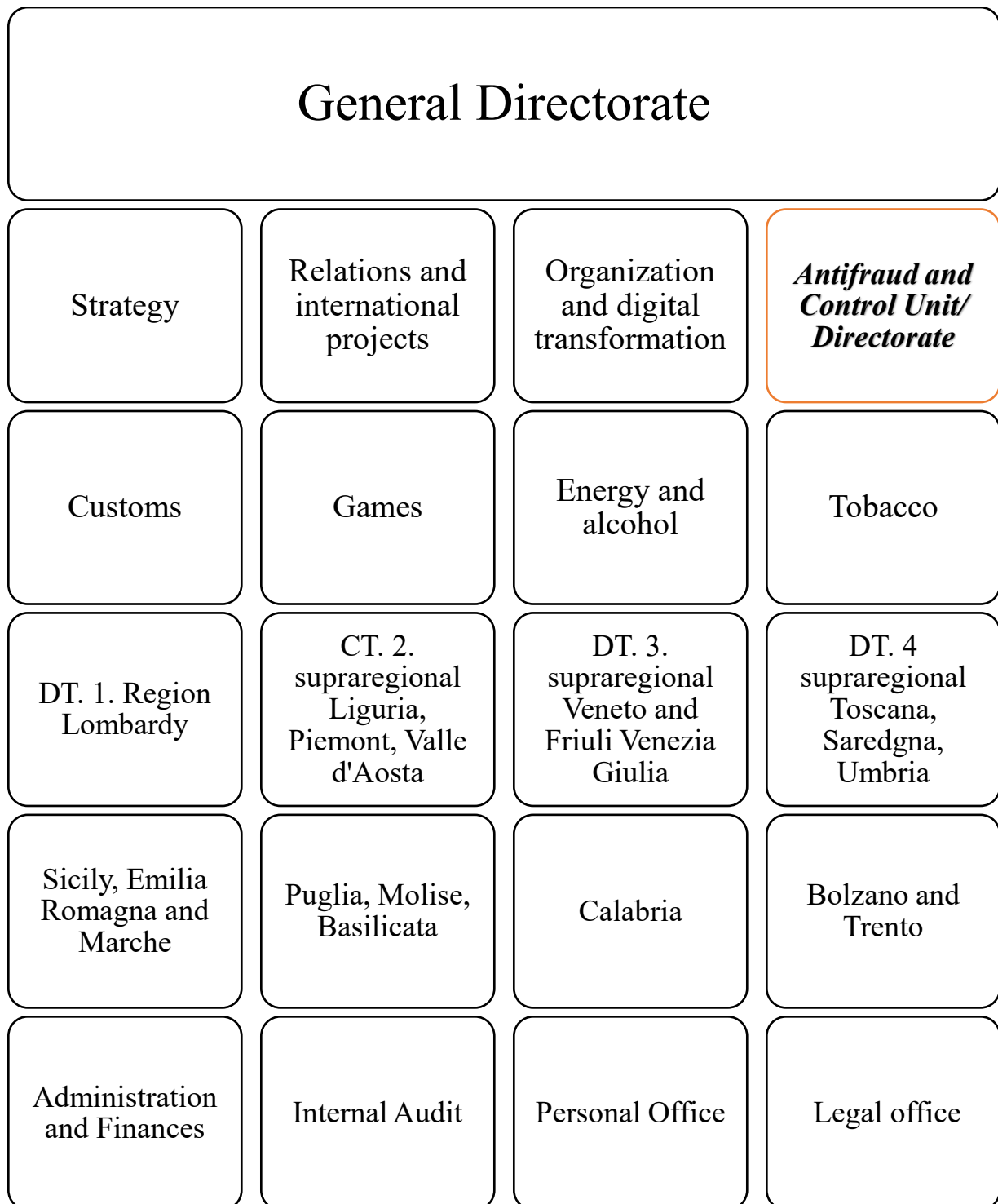
³⁷⁹ European Council 2011, p. 67.

³⁸⁰ See already *Nicolicchia* 2017, p. 7 (9).

³⁸¹ LEGGE 23 dicembre 1986, n. 898 Conversione in legge, con modificazioni, del decreto-legge 27 ottobre 1986, n. 701, recante misure urgenti in materia di controlli degli aiuti comunitari alla produzione dell'olio di oliva. Sanzioni amministrative e penali in materia di aiuti comunitari al settore agricolo.

- 12 All managing authorities that submit payments in the area of structural funds might be the competent national authority.³⁸²
- 13 In the **area of resistance to customs investigations** i.e. **fraud investigations in customs matters**, the Italian *Agenzia delle Dogane* will be competent. It has a special office the **Directorate for the fight against fraud and fraud controls**, the so-called *Direzione Antifrode e controlli* (*Agenzia delle Dogane*), which shall be analysed below. First the general structure of the Italian Customs Authority offers a glimpse into the special Italian System of Dealing with the customs area. The General Directorate serves as the central authority, guiding and supervising the entire organization. Beneath it, the structure is divided into four main branches: Strategy, Relations and International Projects, Organization and Digital Transformation, and the Antifraud and Control Unit, also referred to as the Directorate. Each of these branches oversees a specialised operational area. Strategy is responsible for Customs, Relations and International Projects manages Games, Organization and Digital Transformation handles Energy and Alcohol, and the Antifraud and Control Unit oversees Tobacco.
- 14 The **operational areas** are further divided into large **regional directorates**. Customs is managed through **Directorate 1**, which covers the Region of Lombardy; Games operates via Coordination Territory 2, responsible for the superregional area of Liguria, Piedmont, and Valle d'Aosta; Energy and Alcohol is directed by **Directorate 3**, which oversees the superregional region of Veneto and Friuli Venezia Giulia; and Tobacco is managed through **Directorate 4**, which covers Tuscany, *Sardinia*, and *Umbria*. Within each of these regional directorates, there are smaller regional offices that handle more specific territories. Under the Region of Lombardy falls the office for Sicily, *Emilia Romagna*, and Marche. Liguria, Piedmont, and *Valle d'Aosta* are linked to the office for Puglia, Molise, and *Basilicata*. Veneto and *Friuli Venezia Giulia* are connected to the office for Calabria. Tuscany, *Sardinia*, and *Umbria* are associated with the office for *Bolzano* and Trento. At the final tier of the hierarchy are the specialised support units that assist these regional offices.

³⁸² Dipartimento per la politiche europee, Comitato per la lotta contro le frodi nei confronti dell'Unione europea, Linee guida sulle modalità di comunicazione alla Commissione europea delle Irregolarità e Frodi a danno del bilancio europeo [Guidelines on how to notify the European Commission of irregularities and fraud to the detriment of the European budget], Rome, 2013, 2020, p. 8.

Figure 8: Italian Customs Authority in an Organigram³⁸³

Source: The authors and ADM © 2023.

³⁸³ See <https://www.adm.gov.it/portale/l-organigramma>. Accessed 31 December 2025. The Directorate consists of the following non-general management level offices. Central Director: The position is vacant. Director Marcello Minenna has taken over the relevant functions. Telephone: 0039 0650246135/Fax: 0039 0650957300/E-mail: dir.antifrode@adm.gov.it/PEC: dir.antifrodecontrolli@pec.adm.gov.it.

- 15 In their own external representations, the mission of the Directorate for fraud within the Italian Customs Authority and its competence sound as follows:

“Within the Agency’s sphere of competence it defines control strategies and methodologies in the fields of customs, VAT in international trade, excise duties, gaming and tobacco, through the preparation of guidelines and directives to the territorial structures, monitoring their implementation and ensuring their uniformity, identifying the technologies to be used for analysis, prevention and control activities. It monitors and analyses, through the creation and management of databases, trade flows and other information in the possession of the Agency, in order to develop risk profiles to guide and make control activities more effective. It carries out intelligence activities on trade flows at risk, also through the management of the Analysis Room. It manages and coordinates the Agency’s chemical laboratories. It carries out mutual assistance and administrative cooperation activities. It manages and coordinates, within its own activities, the implementation of strategies for the analysis, prevention and suppression of offences, also within the framework of the Convention with the National Anti-Mafia and Anti-terrorism Directorate, proceeding directly, or with the help of territorial structures, to combat crimes within its competence, with particular regard to cases related to association or international money laundering and terrorist financing. ***It carries out investigations for the suppression of administrative offences and tax and extra-tax offences falling within the Agency’s area of competence, conducting investigations on behalf of the judicial authorities and making use of cooperation and information exchange instruments, including at international level, in matters falling within its area of competence.*** It manages and coordinates the investigative activities of the competent territorial structures and avails itself of their collaboration by promoting and using specialist intervention groups.”³⁸⁴

³⁸⁴ “Nell’ambito delle competenze dell’Agenzia definisce le strategie e le metodologie di controllo nel settore dogane, IVA negli scambi internazionali, accise, giochi e tabacchi, attraverso la predisposizione di indirizzi e direttive alle strutture territoriali, monitorandone l’attuazione e garantendone l’uniformità, individuando le tecnologie da utilizzare per le attività di analisi, di prevenzione e controllo. Monitora ed analizza mediante la creazione e la gestione di banche dati i flussi commerciali e le altre informazioni in possesso dell’Agenzia, allo scopo di elaborare profili di rischio per orientare e rendere più efficace l’attività di controllo. Svolge attività di intelligence sui flussi commerciali a rischio, anche attraverso la gestione della Sala Analisi. Cura e coordina i laboratori chimici dell’Agenzia. Svolge attività di mutua assistenza e cooperazione amministrativa. Cura e coordina, nell’ambito delle proprie attività, l’attuazione delle strategie di analisi, prevenzione e repressione degli illeciti, anche nell’ambito della Convenzione con la Direzione Nazionale Antimafia e Antiterrorismo, procedendo direttamente, o con il concorso delle strutture territoriali, ad azioni di contrasto dei reati di competenza, con particolare riguardo alle fattispecie connesse a ipotesi associative o relative al riciclaggio internazionale e al finanziamento del terrorismo. Svolge attività di investigazione per la repressione degli illeciti amministrativi e dei reati tributari ed extratributari di competenza dell’Agenzia, conducendo indagini su delega dell’autorità giudiziaria nonché avvalendosi degli strumenti di cooperazione e di scambio d’informazione anche a livello internazionale nelle materie di competenza. Cura e coordina l’attività investigativa delle competenti strutture territoriali e si avvale della loro collaborazione promuovendo e avvalendosi di gruppi d’intervento specialistico.”, see <https://www.adm.gov.it/portale/direzione-antifrode>. Accessed 30 June 2025.

The **area of competence** is thus broader than the competence of customs directorates in other Member States. **16**

The office for General Affairs within the Directorate for the fight against fraud of the Italian Customs Authority describes its tasks as follows: “It [the Agenzia delle Dogane/the Italian Customs Authority] cooperates with the competent offices to identify opportunities for improving, streamlining and rationalising processes and internal support tools. In matters within its competence, it monitors the compliant implementation of activities by the Agency’s peripheral directorates. It provides support to the competent bodies for the preparation of relevant legislation.”³⁸⁵ **17**

Most relevance from the view of OLAF investigators, investigation officers and legal officers should be paid to the **Investigations office within the Directorate against fraud and fraud controls of the Italian Customs Authority**. The Investigation office is a contact point for OLAF and its external i.e. national controls in the case of resistance of an Economic Operator. Thus the self-description of the investigation office shall be reproduced here in advance. **18**

“It directs, coordinates and supports the investigative activity of the territorial structures aimed at the repression of tax and extra-tax offences in the fields of energy, alcohol, tobacco, customs and gaming, also with reference to the competence on value added tax. [...] *It manages information from OLAF, also within the framework of mutual assistance in customs matters on fraud cases, INF AM and Joint Customs Operations (JCO) in coordination with the Analysis and Research Office and, where necessary, with the DNA Relations Office and the EPPO Relations Office.* It manages requests for mutual administrative assistance in customs matters, administrative cooperation in matters of preferential origin, administrative cooperation in matters of intra-Community vat. It carries out, in cases of relevant national interest, judicial and tax police activities in its areas of competence, also by coordinating specialist support groups. It manages and coordinates, also in agreement with the other Police Forces and with the Entities institutionally in charge, the activity of repression of illegal behaviours in the field of public gaming; it drives and provides support to the operations carried out through the Illegal Gaming Prevention and Repression Committee (CoPReGI). It ensures the participation in matters within its competence in committees and working groups at national and international level. In matters within its competence, it coordinates and monitors the compliant implementation of activities by the Agency’s Territorial Directorates.

³⁸⁵ “Collabora con gli uffici competenti per individuare opportunità di miglioramento, efficientamento e razionalizzazione dei processi e degli strumenti interni a supporto. Nelle materie di competenza, monitora la conforme applicazione delle attività da parte delle direzioni periferiche dell’Agenzia. Fornisce supporto agli organi competenti per la predisposizione normativa in materia.” See op.cit., footnote above.

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- 19 In the **area of public contracts and procurement frauds** the situation is different. This area is supervised and commissioned by the ANAC, the National Anti-Corruption Authority, whose history dates back to changes in the Italian System, which before 2008 and 2012 had no separate body but just Commissioners and special staff in the Ministry for Transparency.³⁸⁷ Carloni/Paoletti state that: “The resulting scenario sees Anac being competent, as authority, over three macro-areas: anti-corruption, transparency (intended essentially as obligations of publication), public contracts.”³⁸⁸
- 20 In the next step we will take a closer look at the **powers to conduct investigations** on Italian territory. Therefore the main statutory law and Italian orders in the remit of Italian Ministries e.g. the Ministry of Justice, Finance and Interior shall be presented.

e) National law and “on-the-spot-checks and inspections” of OLAF

- 21 For “checks and inspections” of OLAF on Italian territory it is very important to realize that these investigations take place in the area of shared management (as one part of the MFF 2021–2027) but that in addition to that OLAF may need the support of national authorities even in the area of indirect management (direct expenditure).³⁸⁹
- 22 *Lasagni* has summarized the *telos* of external investigations once like follows:

“Surprise on-the-spot checks and inspections can be used by OLAF in both internal and external investigations and constitute the main means of investigation within the territory of the Union. The prerequisites for the exercise of these powers are established by regulations in three mandatory cases: to search for irregularities when these are serious

³⁸⁶ Indirizza, coordina e supporta l’attività investigativa delle strutture territoriali finalizzata alla repressione degli illeciti tributari ed extratributari in materia di energie, alcole, tabacchi, dogane e giochi anche con riferimento alle competenze sull’imposta sul valore aggiunto. Cura i rapporti con l’ufficio centrale di coordinamento per l’attuazione della Convenzione di Napoli II. Gestisce le informazioni provenienti dall’OLAF, anche nel quadro della mutua assistenza in materia doganale su casi di frode, INF AM e le Operazioni Doganali Congiunte (Joint Customs Operations – JCO) in coordinamento con l’Ufficio Analisi e Ricerca e dove necessario con l’Ufficio Rapporti con la DNA e con l’Ufficio rapporti con l’EPPO. Gestisce le richieste di mutua assistenza amministrativa in materia doganale, di cooperazione amministrativa in materia di origine preferenziale, di cooperazione amministrativa in materia di iva intracomunitaria. Svolge, nei casi di rilevante interesse nazionale, attività di polizia giudiziaria e tributaria nei settori di competenza anche coordinando i gruppi specialistici di supporto. Gestisce e coordina, anche d’intesa con le altre Forze di Polizia e con gli Enti istituzionalmente preposti, l’attività di repressione dei comportamenti illeciti in materia di gioco pubblico; dà impulso e fornisce supporto alle operazioni svolte attraverso il Comitato Prevenzione e Repressione Gioco Illegale (CoPreGI). Assicura la partecipazione nelle materie di competenza di comitati e gruppi di lavoro a livello nazionale e internazionale. Nelle materie di competenza, coordina e monitora la conforme applicazione delle attività da parte delle Direzioni Territoriali dell’Agenzia. Direttore : Stefano SARACCHI (interim) Telefono: 0039 0658573016 E-mail: dir.antifrode.investigazioni@adm.gov.it

³⁸⁷ See Carloni and Paoletti 2019, pp. 29 (31 et seq.).

³⁸⁸ Ibid, p. 33.

³⁸⁹ See again La Gala 2021, pp. 13 et seq. For on-the-spot checks and their ratio see as well Lasagni 2015, pp. 7–8.

or transnational; to ensure an equivalent level of protection between the different Member States, or at the request of the latter.

In external investigations, the addressees of these measures can be both the economic operators (natural or natural persons) responsible for the irregularity on the basis of the loan agreement with EU funds, and third economic operators in possession of information pertinent to the facts under investigation. In both cases, access to the premises can only take place with the consent of the interested parties, unless, in the face of refusal, it is possible for the national administrative authorities to act coercively or there are elements to request the intervention of the judicial authority.

Outside of these circumstances, economic operators cannot in any way be subject to coercive powers by OLAF; when the subjects are linked to EU funds by contractual relationship, however, the duty to collaborate in the event of OLAF investigations is included in the same clauses of the loan.”³⁹⁰

aa. Administrative procedure in general

Investigations and their **potential follow-up**, such as **recommendations** of OLAF in the final report e.g. on the recovery of sums or the annulment of decisions granting a sum of money to a beneficiary or applicant might be influenced primarily by the administrative laws of Italy. The administrative procedure in Italy and the process in general depends on two main legal acts³⁹¹:

Administrative Procedure Act/<i>Legge sul procedimento amministrativo</i>	24
Chapter I - Principles (articles 1-3 bis)	
Chapter II - Head of the procedure (articles 4-6 bis) III - Participation in the administrative procedure (articles 7-13)	
Chapter IV - Simplification of administrative action (articles 14-21)	
Chapter IV bis - Effectiveness and invalidity of the administrative provision. revocation and withdrawal (articles 21 bis-21 novies)	
Chapter V - Access to administrative documents (articles 22-28) VI - Final provisions (articles 29-31)	

The administrative process is regulated by the Code of the Administrative Process (*Codice del processo amministrativo*) and its contents are displayed here: **25**

CODE OF THE ADMINISTRATIVE PROCESS/ <i>Codice del processo amministrativo</i>	FIRST BOOK GENERAL PROVISIONS Title I	26
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³⁹⁰ Lasagni 2015, pp. 7–8.

³⁹¹ For the area of political-decision making, an analysis of potential irregularities and offences and the decisions taken at this level with relevance to the EU budget, see Ivone and Reccia 2017, pp. 141 et seq.

Principles and bodies of administrative jurisdiction

Chapter I

General principles

Chapter II Bodies of administrative jurisdiction (Art. 4–6)

Chapter III Administrative jurisdiction (Art. 7–12)

Chapter IV Competence (Art. 13–16)

Chapter V Abstention and recusal (Art. 17–18)

Chapter VI Auxiliary of the judge (Art. 19–21)

Title II Parties and defenders (Art. 22–26)

Title III Actions and questions

Subtitle I Contradictory and intervention (Art. 27–28)

Chapter II Actions of cognition (Art. 29–32)

Title IV Jurisdictional pronouncements (Art. 33–37)

Title V Provisions for postponement (Art. 38–39)

SECOND BOOK

FIRST DEGREE ADMINISTRATIVE PROCESS

Title I General provisions

Chapter I Appeal

Section I Appeal and establishment of the parties (Art. 40–51)

Section II Abbreviation, extension and suspension of terms (Art. 52–54)

Title II Precautionary proceedings (Art. 55–62)

Title III Means of evidence and preliminary activities Head I Means of evidence (Art. 63)

Chapter II Admission and taking of evidence (Art. 64–69)

Title IV Meeting, discussion and decision of appeals Head I Meeting of appeals (Art. 70)

Chapter II Discussion (Art. 71–74)

Chapter III Deliberation (Art. 75–76)

Title V Accidents in the trial

Chapter I Accident of forgery (Art. 77–78)

Chapter II Suspension and termination of the process (Art. 79–80)

Title VI Extinction and inadmissibility (Art. 81–85)

Title VII Correction of material error of the judge's rulings (Art. 86)

Title VIII Audiences (Art. 87)

Title IX Judgment (Art. 88–90)

THIRD BOOK APPEALS

Title I Appeals in general (Art. 91–99)

Title II Appeal (Art. 100–105)

Title III Revocation (Art. 106–107)

Title IV Third party opposition (Art. 108–109)

Title V Appeal to cassation (Art. 110–111)

BOOK FOUR COMPLIANCE AND SPECIAL RITES

Title I Judgment of compliance (Art. 112–115)

Title II Rite regarding access to administrative documents (Art. 116)

Title III Protection against the inertia of the public administration (Art. 117)

Title IV Injunction proceedings (Art. 118)

Title V Abbreviated Rites Relating to Special Disputes (Art. 119–125)

Title VI Litigation on electoral operations

Chapter I Provisions common to electoral litigation (Art. 126–128)

Chapter II Advance protection against acts of exclusion from electoral proceedings preparatory for municipal, provincial and regional elections (Art. 129)

regions and the European Parliament (Art. 130–132)

FIFTH BOOK FINAL RULES (Art.133–137)

Attachments

Chapter III Rite relating to electoral operations of municipalities, provinces,

bb. Special administrative powers and provisions in certain areas of revenue and expenditure

The **administrative procedure** depends on the specific area of duties, collections, taxes and the obligations that derive from Union law. Thus many special laws apply and constitute differences from the administrative procedure in general. The following Decrees, laws, codes and circulars might apply in the various areas, which are explored below in the Chapter on Art. 3 OLAF Regulation (mainly para 6) in Italy: 27

LAW No 241 of 7 August 1990 New rules on administrative proceedings and the right of access to administrative documents./*LEGGE 7 agosto 1990, n. 241 Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi.*

Law of 31 December 2009, n. 196 (1) Accounting and public finance law./*Legge del 31 dicembre 2009, n. 196(1) Legge di contabilità e finanza pubblica.*

Legislative Decree 18 April 2016, n. 50 Code of public contracts/ *Decreto legislativo 18 aprile 2016, n. 50 Codice dei contratti pubblici*

Part II - Procurement Contracts For Works, Services And Suppliesiii - Assignment Procedure

Chapter I - Procedures Common To Assignment Procedures

Section I - Common Provisions

Decree of the President of the Republic of 23 January 1973 n. 43/ *Decreto del Presidente della Repubblica 23 gennaio 1973 n. 43.*

DECREE OF THE PRESIDENT OF THE REPUBLIC 29 September 1973, n. 605 Provisions relating to the tax registry and taxpayers' tax code as amended 21/06/2022/*DECRETO DEL PRESIDENTE DELLA REPUBBLICA 29 settembre 1973, n. 605 Disposizioni relative all'anagrafe tributaria e al codice fiscale dei contribuenti.*

(1) Administrative provisions

(a) Administrative provisions in the area of customs duties and value added tax (VAT) = revenue

28 Customs area:

- DECREE OF THE PRESIDENT OF THE REPUBLIC 23 January 1973, n. 43
- Approval of the consolidated act of customs legislation./*Decreto del Presidente della Repubblica 23 gennaio 1973 n. 43*

VAT area:

- Decree of the President of the Republic dated 10/26/1972 n. 633 - Establishment and regulation of value added tax/*Decreto del Presidente della Repubblica del 26/10/1972 n. 633 - Istituzione e disciplina dell'imposta sul valore aggiunto.*
- LAW 7 January 1929, n. 4 General rules for the repression of violations of financial laws. (029U0004)/ *LEGGE 7 gennaio 1929, n. 4 Norme generali per la repressione delle violazioni delle leggi finanziarie. (029U0004)*

(aa) Principle of investigation (General Tax Code)

29 The principle of investigation is not *expressis verbis* enshrined in one of those codes and Legislative Decrees already mentioned above but instead it can be deduced from the general administrative control provisions and powers.

(bb) External audit (General Tax Code)

30 External audits describe the powers that eg VAT offices are vested with in the area of revenue collection or administrative bodies that manage structural funds (see below (b)).

(cc) Tax and customs investigation (Customs Code/General Tax Code)

31 In the **area of customs duties and connected irregularities** the following Decrees apply:

- the Decree of the President of the Republic of 23 January 1973 n. 43³⁹²
- Legislative Decree 8 November 1990, n. 374 Reorganization of the customs institutes and revision of the assessment and control procedures in implementation of directives no. 79/695 / EEC of 24 July 1979 and no. 82/57 / EEC of 17 December 1981, on the subject of procedures for the release into free circulation of goods, and of directives no. 81/177 / EEC of 24 February 1981 and no. 82/347 /

³⁹² Decreto del Presidente della Repubblica 23 gennaio 1973 n. 43.

EEC of 23 April 1982, on the subject of export procedures for Community goods.³⁹³

A typical investigation could involve **OLAF supporting the Italian Customs**³⁹⁴ with information about countervailing duties.³⁹⁵ **32**

In a paper of the commission it was outlined in late 2022 again that **tobacco smuggling** is still a problem on the block³⁹⁶ and all authorities – including the Italian customs officers – must have enough capacities to fight this fraud scheme. **33**

Customs and border obligations/duties are defined by the Presidential Decree of 1973 and thus determine the legal scope of application in this area: **34**

Article 34 Presidential Decree No. 43 of 23 January 1973 (Customs duties and border duties)³⁹⁷

“Customs duties” are all those duties that the customs is bound to collect by virtue of a law, in connection with customs operations. Among the customs duties, the following constitute “border duties”: import and export duties, levies and other import or export charges provided for by Community regulations and their implementing rules, and also, as regards imported goods, monopoly duties, border surtaxes and any other tax or surtax on consumption in favour of the State.

Chapters 2 and 3 of Title VII of Presidential Decree No. 43 of 23 January 1973. establish the smuggling offences and administrative penalties, thus constitute the area of administrative misbehaviour. It is a matter of ensuring that the origin of the goods is properly proven and that those liable to customs duties comply with the provisions of the decree. **35**

³⁹³ DECRETO LEGISLATIVO 8 novembre 1990, n. 374 Riordinamento degli istituti doganali e revisione delle procedure di accertamento e controllo in attuazione delle direttive n. 79/695/CEE del 24 luglio 1979 e n. 82/57/CEE del 17 dicembre 1981, in tema di procedure di immissione in libera pratica delle merci, e delle direttive n. 81/177/CEE del 24 febbraio 1981 e n. 82/347/CEE del 23 aprile 1982, in tema di procedure di esportazione delle merci comunitarie.

³⁹⁴ National custom authorities are obliged to fight irregularities and fraud with all possibilities they have see ECJ, Case C-213/19, *European Commission v. UK*. If traditional own resources are evaded, the Commission has a string interest to bring an action against a (former) Member State.

³⁹⁵ In 2016 the Commission’s Joint Research Centre (JRC) helped OLAF set-up a newly founded customs prevention system, which enables OLAF to access cargo-container information. The customs anti-fraud enabling technology helps detect frauds.

³⁹⁶ SWD(2022) 305 final: “It is estimated that cigarette smuggling costs the EU budget and Member States’ national budgets at least EUR 10 billion¹⁹ a year in lost customs and tax revenue and undermines health policy.”

³⁹⁷ **Art. 34. Decreto del Presidente della Repubblica 23 gennaio 1973 n. 43.** (Diritti doganali e diritti di confine) Si considerano "diritti doganali" tutti quei diritti che la dogana e’ tenuta a riscuotere in forza di una legge, in relazione alle operazioni doganali. Fra i diritti doganali costituiscono “diritti di confine”: i dazi di importazione e quelli di esportazione, i prelievi e le altre imposizioni all’importazione o all’esportazione previsti dai regolamenti comunitari e dalle relative norme di applicazione ed inoltre, per quanto concerne le merci in importazione, i diritti di monopolio, le sovrimposte di confine ed ogni altra imposta o sovrimposta di consumo a favore dello Stato.

Article 55 Presidential Decree No. 43 of 23 January 1973

Customs-approved treatment or use of goods shall mean the result which for the customs declaration provided for in Article 56. Article 56, to the goods themselves in the manner and form permitted by this by this Single Text. The customs-approved treatment or use shall be as follows 1. For foreign goods (a) permanent importation (b) temporary importation and subsequent re-exportation; (c) dispatch from one customs post to another; (d) transit; (e) warehousing; 2. For domestic goods and for goods nationalized under Article 134: (a) permanent exportation; (b) temporary exportation and subsequent re-importation; (c) cabotage; (d) movement.

- 36 More specific legislation is given by the Legislative Decree of 8. November 1990 (mentioned above):

Article 3 Legislative Decree No 374 of 8 November 1990 Settlement and Collection of Fees and Expenses ³⁹⁸

1. Customs duties shall be assessed, settled and collected in accordance with the provisions of the consolidated text of the legislative provisions on customs matters, approved by Presidential Decree No 43 of 23 January 1973, and of the other laws on customs matters, unless otherwise provided for by the specific laws concerning them
2. The *duties, levies and other import and export charges provided for by Community regulations shall be assessed, settled and collected in accordance with the provisions of the regulations themselves* and, where the regulations refer to the provisions of the individual member States or do not provide for such provisions, in accordance with the

³⁹⁸ **Art. 3. DECRETO LEGISLATIVO 8 novembre 1990, n. 374 Liquidazione e riscossione dei diritti e delle spese**

1. I diritti doganali sono accertati, liquidati e riscossi secondo le norme del testo unico delle disposizioni legislative in materia doganale, approvato con decreto del Presidente della Repubblica 23 gennaio 1973, n. 43, e delle altre leggi in materia doganale, salvo che sia diversamente disposto dalle specifiche leggi che li riguardano
2. I dazi, i prelievi e le altre imposizioni all'importazione ed all'esportazione previsti dai regolamenti comunitari sono accertati, liquidati e riscossi secondo le disposizioni dei regolamenti stessi nonche', ove questi rinviano alla disciplina dei singoli Stati membri o comunque non provvedano, secondo le norme del testo unico delle disposizioni legislative in materia doganale, approvato con decreto del Presidente della Repubblica 23 gennaio 1973, n. 43, e delle altre leggi in materia doganale.
3. Le disposizioni del presente articolo si osservano anche per quanto concerne i rimborsi, gli sgravi ed i recuperi dei diritti doganali.
4. Oltre ai diritti suddetti, sono a carico del contribuente le spese per l'applicazione di piombi o di altri contrassegni alle merci, ai colli che le contengono, ai mezzi di trasporto, ai boccaporti, ecc.
5. Con decreto del Ministro delle finanze sono stabiliti il tipo e la forma di detti piombi e contrassegni, nei casi in cui il loro uso e' prescritto, le modalita' per la loro applicazione e i diritti dovuti per ciascuno di essi.
6. Sono anche a carico del contribuente i corrispettivi del costo dei servizi resi dal personale dell'amministrazione finanziaria per operazioni compiute a richiesta, fuori dell'orario di cui al comma 1 dell'Art. 1 o fuori del circuito doganale. Sono altresì a carico del contribuente le spese per il compimento di lavori di facchinaggio da parte del personale addetto, secondo i regolamenti e le tariffe locali, nonche' ogni altra spesa ed indennita' stabilite da speciali disposizioni di legge o di regolamento.
7. I diritti di ogni sorta e le spese debbono essere pagati prima del rilascio delle merci da parte della dogana, salvo che, se consentito dalle vigenti norme di legge o di regolamento, sia stata prestata idonea garanzia per il loro soddisfacimento.

provisions of the consolidated text of customs provisions, approved by presidential decree No 43 of 23 January 1973, and of the other laws on customs matters.

3. The provisions of this Article shall also be observed with regard to refunds, remissions and recoveries of customs duties.

4. In addition to the aforesaid duties, the taxpayer shall bear the costs of attaching seals or other marks to the goods, the packages containing them, the means of transport, the hatches, etc.

5. A Decree of the Minister of Finance shall determine the type and form of such seals and marks, in the cases where their use is prescribed, the manner of their application and the fees due for each of them.

6. There shall also be charged to the taxpayer the fees for the cost of services rendered by the staff of the tax authorities in respect of operations carried out on request, outside the hours referred to in paragraph 1 of Article 1 or outside the customs circuit. Also to be borne by the taxpayer are the expenses for the performance of portage work by the personnel in charge of such work, in accordance with the local regulations and tariffs, as well as any other expenses and allowances provided for by special provisions of the law or regulations.

7. Fees and expenses of all kinds shall be paid before the release of the goods by the Customs, unless, if permitted by applicable law or regulation, adequate security has been provided for their discharge.

Article 4 Legislative Decree No 374 of 8 November 1990 Settlement and collection of fees and expenses Form and content of the declaration Cases of nullity

1. The declaration must be made and signed by the declarant, on forms conforming to models approved by decree of the Minister of Finance to be published in the Official Gazette of the Italian Republic.³⁹⁹

³⁹⁹ **Art. 4. DECRETO LEGISLATIVO 8 novembre 1990, n. 374 Liquidazione e riscossione dei diritti e delle spese Forma e contenuto della dichiarazione Casi di nullità**

1. La dichiarazione deve essere redatta e sottoscritta dal dichiarante, su stampati conformi a modelli approvati con decreto del Ministro delle finanze da pubblicarsi nella Gazzetta Ufficiale della Repubblica italiana.

2. Essa deve contenere le seguenti indicazioni: a) l'identità ed il domicilio fiscale del proprietario delle merci, dell'eventuale suo rappresentante e di tutti coloro per conto dei quali l'operazione doganale viene effettuata; b) il codice fiscale dei soggetti che intervengono nell'operazione doganale e degli altri soggetti ad essa interessati ovvero il codice sostitutivo ad uso meccanografico, a norma del decreto-legge 30 dicembre 1982, n. 953, convertito, con modificazioni, dalla legge 28 febbraio 1983, n. 53; c) i luoghi di origine, di provenienza e di destinazione delle merci; d) la quantità e la natura dei colli con le marche, sigle o cifre identificative; e) la descrizione delle merci con l'indicazione della posizione di tariffa, della qualità, della quantità, del valore e di ogni altro elemento occorrente per la liquidazione dei diritti; in luogo della denominazione tariffaria, nei casi stabiliti con decreto del Ministro delle finanze, può essere indicata quella commerciale, purché quest'ultima contenga tutti gli elementi che occorrono per l'applicazione della tariffa e per la liquidazione dei diritti; f) gli altri dati prescritti nei modelli ufficiali in relazione alla destinazione doganale richiesta e le ulteriori indicazioni stabilite in base a norme legislative o regolamentari.

2. The declaration must contain the following information: a) the identity and tax domicile of the owner of the goods, of his representative, if any, and of all those on whose behalf the customs operation is carried out; b) the tax code of the persons involved in the customs operation and of the other parties concerned or the substitute code for technological use, in accordance with decree-law no. 953 of 30 December 1982, converted, with amendments, by law no. 53 of 28 February 1983; c) the places of origin of the goods and the place where they are to be 53; c) the places of origin, provenance and destination of the goods; d) the quantity and nature of the packages with the identifying marks, abbreviations or numbers; e) the description of the goods with the indication of the tariff heading, quality, quantity, value and any other element necessary for the payment of the duties; (e) a description of the goods with an indication of the tariff position, quality, quantity, value and any other element necessary for the assessment of duties; (f) the other particulars prescribed in the official models in relation to the required customs-approved treatment or use and the further particulars laid down by law or regulation.
3. The written declaration must also indicate the amount of the individual duties borne by the goods and the total amount of the sum to be paid or guaranteed, calculated on the basis of the elements declared in accordance with paragraph 2; for this fulfilment, of a merely indicative nature, those who are not professional traders may request the free assistance of a customs officer.
4. In particular cases the head of the office may exempt the declarant from the obligation laid down in paragraph 3.
5. The declaration shall be considered void if it contains erasures or other alterations or if any other particulars provided for in this Article are missing, except in the case provided for in Article 5. The invalidity cannot be claimed by the declarant when the declaration has been accepted by the customs.
6. The commercial and transport documents relating to the goods declared, which are necessary for the purpose of the customs-approved treatment or use requested, as well as any other documents the production of which is prescribed by other provisions, shall be produced together with the declaration.

3. Nella dichiarazione scritta devono essere indicati, inoltre, l'importo dei singoli tributi gravanti sulla merce e l'ammontare complessivo della somma da pagare o da garantire, calcolati sulla base degli elementi dichiarati a norma del comma 2; per tale adempimento, di carattere meramente indicativo, coloro che non siano operatori professionali possono chiedere l'assistenza gratuita di un funzionario doganale.

4. In casi particolari il capo dell'ufficio puo' esonerare il dichiarante dall'obbligo di cui al comma 3.

5. La dichiarazione si considera nulla quando rechi cancellature od altre alterazioni oppure quando manchi qualunque altra indicazione prevista dal presente articolo, salvo il caso di cui all'Art. 5. La nullita' non puo' essere fatta valere dal dichiarante quando la dichiarazione e' stata accettata dalla dogana.

6. Insieme con la dichiarazione devono essere presentati i documenti commerciali e di trasporto, relativi alla merce dichiarata, necessari ai fini della destinazione doganale richiesta, nonche' ogni altro documento la cui presentazione sia prescritta da altre disposizioni.

**Article 5 Incomplete declaration Legislative Decree No 374 of 8 November 1990
Settlement and collection of fees and expenses Form and content of the declaration
Cases of nullity⁴⁰⁰**

1. If particular circumstances justify it, it can be filed a declaration without some of the indications or documents referred to in Art. 4, provided that the identification of the declarant, of the goods and the quantification of taxes imposed.
2. The term within which the declarant must communicate the omitted information and present the missing documents, as well as the conditions and modalities under which the submission of the incomplete declaration, are established with provision of the director general of the customs department e of indirect taxes, in compliance with the provisions adopted in matter by the competent community bodies.

See furthermore the following provisions that might apply in this area:

Article 6 Presentation of the declaration/Article 6 Presentazione della dichiarazione

Article 7 Modification of the declaration/Article 7 Modifica della dichiarazione

Article 8 Acceptance and control of the declaration Visit of the goods. Customs Declaration/ Article 8 Accettazione e controllo della dichiarazione Visita delle merci. Bolletta doganale

Article 9 Definition of the assessment/Article 9 Definizione dell'accertamento

Article 10 Unwritten declaration/Article 10 Dichiarazione non scritta

Article 11 Review of the assessment, attributions and powers of the offices/Article 11 Revisione dell'accertamento, attribuzioni e poteri degli uffici

Article 12 Simplified assessment procedures for goods from abroad - Authorised subjects

Article 13 Implementation of the simplified verification procedure for goods from abroad/Article 13 Esecuzione della procedura semplificata di accertamento per merci provenienti dall'estero [...].

In the **area of VAT irregularities** the following Decrees and laws apply:

37

- Decree of the President of the Republic dated 10/26/1972 n. 633 - Establishment and regulation of value added tax/*Decreto del Presidente della Repubblica del 26/10/1972 n. 633 - Istituzione e disciplina dell'imposta sul valore aggiunto.*

⁴⁰⁰ **Art. 5. Dichiarazione incompleta DECRETO LEGISLATIVO 8 novembre 1990, n. 374**

1. Qualora particolari circostanze lo giustificino, puo' essere presentata una dichiarazione priva di alcune delle indicazioni o documenti di cui all'Art. 4, sempreche' siano possibili la identificazione del dichiarante, delle merci e la quantificazione dei tributi gravanti.

2. Il termine entro cui il dichiarante dovra' comunicare le indicazioni omesse e presentare i documenti mancanti, nonche' le condizioni e le modalita' alle quali puo' essere consentita la presentazione della dichiarazione incompleta, sono stabiliti con provvedimento del direttore generale del dipartimento delle dogane e delle imposte indirette, nel rispetto delle disposizioni adottate in materia dai competenti organi comunitari.

- LAW 7 January 1929, n. 4 General rules for the repression of violations of financial laws. (029U0004)/ *LEGGE 7 gennaio 1929, n. 4 Norme generali per la repressione delle violazioni delle leggi finanziarie. (029U0004)*
- Decree of the President of the Republic dated 09/29/1973 n. 600 - Common provisions on the assessment of income taxes./*Decreto del Presidente della Repubblica del 29/09/1973 n. 600 -Disposizioni comuni in materia di accertamento delle imposte sui redditi.*

38 The main legal provisions in the VAT area stem from the Presidential Decrees N° 633/1972. Title I of the Decree contains General provisions (Art. 1–20) and Title II describes the obligations of tax payers (Art. 21–40). Title III contains sanctions for various forms of conduct under the decree (Art. 41–50). Title IV concerns audits, assessments and verifications (Art. 51–66bis). Art. 70bis–Art. 70duodecime contains provisions on VAT Groups. The latest part presents Title Vi: Miscellaneous Provisions.

39 Art. 17 is important as it indicates who is a taxable person under Italian and European law.

Article 38 bis 1⁴⁰¹

Refund of tax paid in other Member States of the Community

1. Taxable persons established in the territory of the State who have paid the tax in another Member State in relation to goods and services purchased or imported there, may request reimbursement from that Member State by submitting an application to the Revenue Agency through special electronic portal.

⁴⁰¹ **Art. 38 bis 1 Rimborso dell'imposta assolta in altri Stati membri della Comunità**

In vigore dal 20/02/2010 con effetto dal 01/01/2010

Modificato da: Decreto legislativo del 11/02/2010 n. 18 Articolo 1

Nota:

Le disposizioni del presente articolo, aggiunto dall'Art. 1 decreto legislativo 11 febbraio 2010 n. 18, si applicano alle richieste di rimborso presentate a partire dal 1 gennaio 2010.

1. I soggetti passivi stabiliti nel territorio dello Stato che hanno assolto l'imposta in un altro Stato membro in relazione a beni e servizi ivi acquistati o importati, possono chiederne il rimborso a detto Stato membro presentando un'istanza all'Agenzia delle entrate tramite apposito portale elettronico.

2. L'Agenzia delle entrate provvede ad inoltrare tale richiesta allo Stato membro del rimborso, eccetto i casi in cui, durante il periodo di riferimento del rimborso, il richiedente:

a) non ha svolto un'attività d'impresa, arte o professione;

b) ha effettuato unicamente operazioni esenti o non soggette che non danno diritto alla detrazione dell'imposta ai sensi degli articoli 19 e seguenti;

c) si è avvalso del regime dei contribuenti minimi di cui ai commi da 96 a 117 dell'articolo 1 della legge 24 dicembre 2007, n. 244;

d) si è avvalso del regime speciale per i produttori agricoli.

3. Nei casi indicati al comma 2 l'Agenzia delle entrate notifica al richiedente il mancato inoltro della richiesta di rimborso. Avverso il provvedimento motivato di rifiuto dell'inoltro è ammesso ricorso secondo le disposizioni relative al contenzioso tributario.

4. Con provvedimento del Direttore dell'Agenzia delle entrate, da emanarsi entro novanta giorni dall'entrata in vigore della presente disposizione, è individuato il competente ufficio dell'Agenzia delle entrate e sono stabilite le modalità ed i termini procedurali per l'applicazione delle disposizioni del presente articolo nonché per la realizzazione dei relativi scambi informativi.

2. The Revenue Agency shall forward this request to the Member State of the reimbursement, except in cases where, during the reimbursement reference period, the applicant:
- a) has not carried out a business activity, art or profession;
 - b) has only carried out exempt or non-subject operations that do not give the right to deduct the tax pursuant to articles 19 and following;
 - c) made use of the minimum taxpayer regime referred to in paragraphs 96 to 117 of article 1 of law no. 244;
 - d) made use of the special regime for agricultural producers.
3. In the cases indicated in paragraph 2, the Revenue Agency notifies the applicant that the refund request has not been forwarded. An appeal against the motivated provision of refusal of forwarding is allowed according to the provisions relating to tax litigation.
4. With a provision of the Director of the Revenue Agency, to be issued within ninety days from the entry into force of this provision, the competent office of the Revenue Agency is identified and the procedures and procedural terms for the application of the provisions of this article as well as for the realization of the relative information exchanges.”

Article 35 Regulatory provision concerning declarations of commencement, variation and cessation of activities.

(dd) Fiscal supervision

The Ministry of Finance supervises this sector.⁴⁰² The *Guardia di Finanza* places a Liaison Officer within the Ministry. The Anti-Fraud Committee (AFCOS) established under Article 76 of Law No 142/1992 and strengthened by subsequent decrees. It is housed in the Prime Minister’s Office (Department for European Policies) and provides coordination, guidance and reporting functions for irregularities and fraud affecting EU funds (see above → Introduction and below → Art. 12a OLAF Regulation).⁴⁰³ The *Corte dei Conti* (Italian Court of Auditors) oversees final audits of EU funds, ensuring correct management, compliance and detection of irregularities.⁴⁰⁴

40

⁴⁰² See <https://www.finanze.gov.it/it/il-dipartimento/organigramma/>. Accessed 30 June 2025.

Latest changes stem from the *Decreto del Presidente del Consiglio dei Ministri del 30 settembre 2020, n. 161-Regolamento recante modifiche ed integrazioni al decreto del Presidente del Consiglio dei ministri 26 giugno 2019, n. 103, concernente il regolamento di organizzazione del Ministero dell’economia e delle finanze.*

⁴⁰³ Malan/Chen et al. 2022, p. 15 and further information on Italy pp. 11–19.

⁴⁰⁴ *Ibid*, p. 15.

(b) Administrative provisions in the area of structural funds and internal policies (interne Politiken) = expenditure

(aa) Structural funds

- 41 As said above, the role of the *Corte dei conti* (Italian Court of Auditors) in the audit of the use of European funds is very important and is another layer of protection against fraud.⁴⁰⁵

Article 100⁴⁰⁶ Italian Constitution

The Council of States a body of legal-administrative consultancy and the protection of justice in the administration.

The Court of Auditors [cf. Art. 103 c.2] exercises preventive control over the legitimacy of government acts, and also the subsequent control over the management of the state budget. It participates, in the cases and in the forms established by law, in the control of the financial management of the entities to which the State contributes on an ordinary basis. He reports directly to the Chambers on the result of the feedback carried out [cf. Art. 81 c.1].

The law ensures the independence of the two Institutes and their components vis-à-vis the Government [cf. Art. 108 c.2].

- 42 The Law on the Italian Court of Auditors/*LEGGE 14 gennaio 1994, n. 20 Disposizioni in materia di giurisdizione e controllo della Corte dei conti* stipulates in Art. 3 the relevance of EU funds:

Article 3 Auditing rules of the Court of Auditors

[...] 4.⁴⁰⁷ The Court of Auditors carries out, even during the financial year, the subsequent control over the management of the budget and assets of public administrations,

⁴⁰⁵ Frodi comunitarie e Corte dei conti, di Tullio Lazzaro - Presidente della Corte dei conti Intervento tenuto al Convegno “Finanziamenti comunitari e contrasto alle frodi” – Milano, 6 maggio 2009; Carlino 2021, pp. 17 et seq; Canale 2021, pp. 37 et seq., Coppola 2021, pp. 45 et seq.

⁴⁰⁶ **Articolo 100 Costituzione**

Il Consiglio di Stato [cfr. Art. 103 c.1] è organo di consulenza giuridico-amministrativa e di tutela della giustizia nell'amministrazione.

La Corte dei conti [cfr. Art. 103 c.2] esercita il controllo preventivo di legittimità sugli atti del Governo, e anche quello successivo sulla gestione del bilancio dello Stato. Partecipa, nei casi e nelle forme stabilite dalla legge, al controllo sulla gestione finanziaria degli enti a cui lo Stato contribuisce in via ordinaria. Riferisce direttamente alle Camere sul risultato del riscontro eseguito [cfr. Art. 81 c.1].

La legge assicura l'indipendenza dei due Istituti e dei loro componenti di fronte al Governo [cfr. Art. 108 c.2].

⁴⁰⁷ **Art. 3 Norme in materia di controllo della Corte dei conti**

[...]

4. La Corte dei conti svolge, anche in corso di esercizio, il controllo successivo sulla gestione del bilancio e del patrimonio delle amministrazioni pubbliche, nonché sulle gestioni fuori bilancio e sui fondi di provenienza comunitaria, verificando la legittimità e la regolarità delle gestioni, nonché il funzionamento dei controlli interni a ciascuna amministrazione. Accerta, anche in base all'esito di altri controlli, la rispondenza dei risultati dell'attività amministrativa agli obiettivi stabiliti dalla legge, valutando comparativamente costi,

as well as on the management outside budget and on EU funds, verifying the legitimacy and regularity of management, as well as the functioning of the internal controls of each administration. It ascertains, also on the basis of the outcome of other checks, compliance the results of the administrative activity to the established objectives by law, comparing the costs, methods and times of the carrying out the administrative action. The Court defines annually, the control programs and reference criteria on the basis of the priorities previously approved by the competent authorities Parliamentary committees under their respective regulations, too taking into account, for reporting purposes for the coordination of the system public finance, reports drawn up by bodies, collegial or monochrats, who exercise control or supervision functions over administrations, public bodies, independent administrative authorities or societa 'to prevalente public capital.

It may thus be concluded that the Corte de Conti may discover major irregularities that he will report to OLAF. **43**

If taking a view at the past funding programmes of the Union it can be said that 15 national and 60 regional programmes were established and Italy was herewith granted a funding of EUR 63.7 billion (2014–2020 ESIF period).⁴⁰⁸

More investigation powers including administrative provisions can be found in these laws see → Law 24 November 1981, n. 689 Changes to the penal system/*Legge 24 novembre 1981, n. 689 Modifiche al sistema penale:* **44**

Investigative powers acc. to Art. 13 Law 24.11.1981 no. 689⁴⁰⁹ in connection with Art. 4 Law 23.12.86 no. 898:⁴¹⁰ **45**

- Searching of information
- Searches of items and premises (excluding private premises)
- Conduct technical surveys in descriptive and photographic form
- Conduct other technical activities
- Seizure of items (within the possibilities of the CPC)

See → Law 21 December 1999, n. 526 – Provisions for the fulfilment of obligations deriving from Italy's membership of the European Communities - Community law 1999 (in the area of structural funds (except from EAGFL)/*Legge 21 dicembre 1999, n. 526*

modi e tempi dello svolgimento dell'azione amministrativa. La Corte definisce annualmente i programmi e i criteri di riferimento del controllo sulla base delle priorit  previamente deliberate dalle competenti Commissioni parlamentari a norma dei rispettivi regolamenti, anche tenendo conto, ai fini di referto per il coordinamento del sistema di finanza pubblica, delle relazioni redatte dagli organi, collegiali o monocratici, che esercitano funzioni di controllo o vigilanza su amministrazioni, enti pubblici, autorita' amministrative indipendenti o societa' a prevalente capitale pubblico.

⁴⁰⁸ European Structural and Investment Funds, data, <https://cohesiondata.ec.europa.eu/countries/IT>. Accessed 31 December 2025.

⁴⁰⁹ Weber 2003, p. 192.

⁴¹⁰ Weber 2003, p. 193.

- *Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunita' europee - Legge comunitaria 1999:*
- General guidelines and principles of legislative delegation, Art. 2
- Art. 14 of Law 526/99 amends **Article 53 of law no 128 Law 24 April 1998** (Provisions for the fulfilment of obligations deriving from Italy's membership of the European Communities. Community law 1995-1997) → Art. 53 deals with controls and supervision of protected denominations and certificates of specificity
- Powers of the Antitrust Authority: Art. 29 Law no. 526/99 amends Art. 54 of law no. 52 and gives investigative competences to the Guardia di Finanza
- Guardia di Finanza has the investigative powers attributed to the Finance Police for the purposes of assessing the VAT and the income tax, Art. 30 (Protection of community financial interests)

Table 7 – Structural funds and national administrative authorities – Cohesion policy acc. to the CFR Regulation in Italy (2021–2027)

46

The Euro- pean Re- gional De- velopment Fund (ERDF) – includes European Territorial Coopera- tion (Inter- reg)	Just Tran- sition fund	Eu- ro- pean So- cial Fund Plus ESF+	European Maritime, Fisheries and Aqua- culture Fund EM- FAF	Asy- lum, Migra- tion and In- tegra- tion Fund (AMIF)	In- ter- nal Se- cu- rity Fund (ISF)	Instru- ment for Fi- nancial Assis- tance in the Field of Border Man- age- ment and Visa (BMVI)	Euro- pean Ru- ral Devel- opment Fund (EAFRD) * Not part of the CFR Regula- tion any- more (as of 2023)
Total EU al- locations for Italy: 26,34 billion euros	Total EU allo- ca- tions for It- aly: 1,03	Total EU allo- ca- tions for It- aly: 14,8	Total EU allocations for Italy: 518,2 mil- lion euros	Total EU allo- cations for It- aly: 512,6 million uros	Total EU allo- ca- tions for Italy: ca.	Total EU Al- loca- tions for Italy: 315,1 million euros	EU funds for Italy: 9,75 bil- lion euros

<p>Administrative authority: Various national and regional authorities are responsible for managing different ERDF operational programmes in Italy: Ministry of Education, ERDF – FSE Single Management Authority Service, General Directorate for Knowledge, Research, Work and Enterprise, Regional Directorate of Education, Training and Work, etc. (see here)</p>	<p>bil- lion euros</p>	<p>bil- lion euros</p>	<p>Managing Authority: Ministero delle politiche agricole alimentari e forestali (MIPAAF), Direzione generale per la pesca marittima e l’acquacoltura (PEMAC)</p>	<p>Administrative authority: Department for Civil Liberties and Immigration of the Ministry of the Interior</p>	<p>83,5 mil- lion euros</p>	<p>Managing Authority: National Rural Development Program (PSRN) Ministry of Agricultural, Food and Forestry Policies Department of European and international policies and rural development General Directorate of Rural Development</p>
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(bb) Internal policies

For internal policies there might be a fictitious competence by factual connection.

47

(c) Administrative provisions in the area of the common organization of the markets= expenditure

- 48 Law of 10 October 1990, n. 287 – Rules for the protection of competition and the market/*Legge 10 ottobre 1990, n. 287 Norme per la tutela della concorrenza e del mercato*
- Scope, Art. 1
 - “1. *The provisions of this law in implementation of the article 41 of the Constitution to protect and guarantee the right of initiative economic, apply to agreements, abuses of position dominant and business concentrations (...)*”
 - Investigative powers Art. 12 et seq.
 - Antitrust authority has investigative powers according to Law no. 287/90, Art. 54 Law 6 February 1996, n. 52 (Provisions for the fulfilment of obligations deriving from Italy’s membership of the European Communities - Community law 1994) in connection with Art. 12 et seq. Law 10 October 1990, n. 287

(d) Administrative provisions in the area of direct expenditure

- 49 **Article 83⁴¹¹ Code of public contracts (Criteri di selezione e soccorso istruttorio)**
1. The selection criteria relate exclusively to:

⁴¹¹ **Art. 83. (Selection criteria and preliminary investigation)**

1. The selection criteria relate exclusively to:

- a) professional suitability requirements;
- b) economic and financial capacity;
- c) technical and professional skills.

2. The requirements and capacities referred to in paragraph 1 are relevant and proportionate to the object of the contract, bearing in mind the public interest in having the largest number of potential participants, in compliance with the principles of transparency and rotation. For the works, with the regulation referred to in article 216, paragraph 27-octies, they are governed, in compliance with the principles referred to in this article and also in order to facilitate access by micro-enterprises and small and medium-sized enterprises, the qualification system, the cases and methods of use, the requisites and skills that must be possessed by the bidder, also with reference to the consortia referred to in Article 45, letters b) and c) and the documentation required for the purpose of demonstrating their possession as per annex XVII. Until the adoption of said regulation, article 216, paragraph 14 is applied. (paragraph thus amended by Art. 1, paragraph 20, letter p), of law no. 55 of 2019)

3. In order to meet the requirements referred to in paragraph 1, letter a), competitors in the tenders, if Italian citizens or citizens of another Member State resident in Italy, must be registered in the register of the chamber of commerce, industry, crafts and agriculture or in the register of provincial commissions for crafts, or at the competent professional associations. Proof of registration, according to the procedures in force in the country of residence, in one of the professional or commercial registers referred to in Annex XVI is required to the citizen of another Member State not resident in Italy., by sworn declaration or according to the procedures in force in the Member State in which it is established or by attesting, under its own responsibility, that the certificate produced has been issued by one of the professional or commercial registers established in the country in which it is resident. In the procedures for the award of public service contracts, if the candidates or tenderers must have a particular authorization or belong to a particular organization in order to be able to provide the services in question in their country of origin, the contracting authority may ask them to prove possession of this authorization or membership in the organization.

4. For service and supply contracts, for the purpose of verifying the possession of the requirements referred to in paragraph 1, letter b), the contracting authorities, in the call for tenders, may request:

- (a) that the economic operators have a minimum annual turnover, including a certain minimum turnover in the sector of activity which is the subject of the contract;

b) that economic operators provide information on their annual accounts highlighting in particular the relationships between assets and liabilities;

c) an adequate level of insurance coverage against occupational risks.

5. The minimum annual turnover required pursuant to paragraph 4, letter a) cannot in any case exceed double the estimated value of the contract, calculated in relation to the reference period of the same, except in adequately justified circumstances relating to the specific risks associated with nature of the services and supplies, object of the assignment. The contracting authority, where it requires a minimum annual turnover, indicates the reasons for this in the tender documents. For contracts divided into lots, this paragraph applies to each single lot. However, the contracting authorities may set the minimum annual turnover that economic operators must have with reference to groups of lots in the event that the successful tenderer is awarded several lots to be carried out simultaneously. If contracts based on a framework agreement are to be awarded following the reopening of the tender, the requirement of maximum annual turnover referred to in the first sentence of this paragraph is calculated on the basis of the maximum expected value of the specific contracts that will be performed simultaneously, if known, otherwise based on the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum annual turnover requirement is calculated on the basis of the maximum expected value of the specific contracts to be awarded under that system. the requirement of the maximum annual turnover referred to in the first sentence of this paragraph is calculated on the basis of the maximum expected value of the specific contracts that will be executed at the same time, if known, otherwise on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum annual turnover requirement is calculated on the basis of the maximum expected value of the specific contracts to be awarded under that system. the requirement of the maximum annual turnover referred to in the first sentence of this paragraph is calculated on the basis of the maximum expected value of the specific contracts that will be executed at the same time, if known, otherwise on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum annual turnover requirement is calculated on the basis of the maximum expected value of the specific contracts to be awarded under that system.

5-bis . In relation to the requirement referred to in paragraph 4, letter c), the adequacy of the insurance coverage offered is assessed on the basis of the insurance policy against professional risks owned by the economic operator and currently valid. In relation to insurance policies of an amount lower than the value of the contract, the contracting authorities may request that the offer be accompanied, under penalty of exclusion, by the undertaking by the insurance company to adjust the value of the insurance policy to that of the contract, in case of award.

(paragraph introduced by article 8, paragraph 5, letter c), of law no. 120 of 2020)

6. For service and supply contracts, for the selection criteria referred to in paragraph 1, letter c), the contracting authorities may request requirements to ensure that economic operators have the human and technical resources and experience necessary to perform the contract with an adequate quality standard. In the procurement procedures for supplies that require siting or installation works, services or works, the professional ability of economic operators to provide these services or to carry out the installation or works is assessed with reference to their competence, efficiency , experience and reliability. The information requested cannot exceed the subject of the contract; the administration must, however, take into account the

7. Without prejudice to the qualification system referred to in Article 84 as well as the provisions regarding preliminary documentary evidence in Article 85 , the demonstration of the requirements referred to in paragraph 1, letters b) and c) is provided, depending on the nature , of the quantity or importance and use of the supplies or services, using the means of proof referred to in article 86, paragraphs 4 and 5 .

8. The contracting authorities indicate the conditions of participation required, which can be expressed as minimum levels of ability, together with the appropriate means of proof, in the call for tenders or in the invitation to confirm interest, and carry out the formal and substantial verification of the production capacities. , technical and professional skills, including human resources, organic to the company, as well as the activities actually performed. For the subjects referred to in article 45, paragraph 2, letters d), e), f) and g) , any measures in which the same requisites must be possessed by the single participating competitors are indicated in the announcement.[In any case, the agent must possess the requisites and perform the services by a majority.] The notices and invitation letters may not contain further prescriptions under penalty of exclusion from those provided for by this code and by other provisions of the law in force. However, these prescriptions are null and void.

(the third period must be considered expelled from the legal system by virtue of the ruling of the Court of Justice of the EU of 28 April 2022, case C-642-20)

- a) professional suitability requirements;
- b) economic and financial capacity;
- c) technical and professional skills.

2. The requirements and capacities referred to in paragraph 1 are relevant and proportionate to the object of the contract, bearing in mind the public interest in having the largest number of potential participants, in compliance with the principles of transparency and rotation. For the works, with the regulation referred to in article 216, paragraph 27-octies, they are governed, in compliance with the principles referred to in this article and also in order to facilitate access by micro-enterprises and small and medium-sized enterprises, the qualification system, the cases and methods of use, the requisites and skills that must be possessed by the bidder, also with reference to the consortia referred to in Article 45, letters b) and c) and the documentation required for the purpose of demonstrating their possession as per annex XVII. Until the adoption of said regulation, article 216, paragraph 14 is applied.

(paragraph thus amended by Art. 1, paragraph 20, letter p), of law no. 55 of 2019)

3. In order to meet the requirements referred to in paragraph 1, letter a), competitors in the tenders, if Italian citizens or citizens of another Member State resident in Italy, must be registered in the register of the chamber of commerce, industry, crafts and agriculture or in the register of provincial commissions for crafts, or at the competent professional

9. The shortcomings of any formal element of the application can be remedied through the preliminary aid procedure referred to in this paragraph. In particular, in the event of lack, incompleteness and any other essential irregularity of the elements and of the single European tender document referred to in article 85, with the exception of those relating to the economic offer and the technical offer, the contracting authority assigns the bidder a term, not exceeding ten days, for the necessary declarations to be made, integrated or regularized, indicating their content and the subjects who must give. In case of useless expiry of the regularization period, the competitor is excluded from the race. Deficiencies in the documentation that do not allow the identification of the content or of the person responsible for the same constitute essential irregularities that cannot be remedied.

10. The company rating system and related bonuses have been set up at ANAC, which manages its management, for which the Authority issues specific certification to economic operators, upon request. The aforementioned system is connected to reputational requirements assessed on the basis of qualitative and quantitative, objective and measurable indices, as well as on the basis of definitive assessments which express the reliability of the company. ANAC defines the reputational requirements and the evaluation criteria of the same and the criteria relating to the evaluation of the impact generated pursuant to article 1, paragraph 382, letter b), of the law of 28 December 2015, n. 208, even if the bidder is a person other than benefit companies, as well as the procedures for issuing the related certification, through guidelines adopted within three months from the date of entry into force of this provision. The guidelines referred to in the previous period also establish an administrative system, regulated under the direction of ANAC, of penalties and bonuses for the mandatory reporting of extortion and corruption requests by companies holding public tenders, including subcontractors and companies supplying materials, works and services, also providing for a specific sanctioning regime in cases of omitted or late reporting. The reputational requirements underlying the business rating referred to in this paragraph take into account, in particular, of the previous conduct of the company, with reference to the failure to use the preliminary investigation, the application of the provisions on the mandatory reporting of extortion and corruption requests, as well as compliance with the times and costs in the execution of contracts and the impact and the outcome of the dispute both in the participation in the tender procedures and in the contract execution phase. For the calculation of the business rating, the behavior of economic operators in the credit procedures started after the entry into force of this provision is taken into account.

(paragraph thus amended, in the third sentence, by Art.49, paragraph 1-bis, letter a), of decree-law no. 124 of 2019, converted by law no. 157 of 2019)

associations. Proof of registration, according to the procedures in force in the country of residence, in one of the professional or commercial registers referred to in Annex XVI is required to the citizen of another Member State not resident in Italy., by sworn declaration or according to the procedures in force in the Member State in which it is established or by attesting, under its own responsibility, that the certificate produced has been issued by one of the professional or commercial registers established in the country in which it is resident. In the procedures for the award of public service contracts, if the candidates or tenderers must have a particular authorisation or belong to a particular organization in order to be able to provide the services in question in their country of origin, the contracting authority may ask them to prove possession of this authorisation or membership in the organization.

4. For service and supply contracts, for the purpose of verifying the possession of the requirements referred to in paragraph 1, letter b), the contracting authorities, in the call for tenders, may request:

(a) that the economic operators have a minimum annual turnover, including a certain minimum turnover in the sector of activity which is the subject of the contract;

(b) that economic operators provide information on their annual accounts highlighting in particular the relationships between assets and liabilities;

(c) an adequate level of insurance coverage against occupational risks.

5. The minimum annual turnover required pursuant to paragraph 4, letter a) cannot in any case exceed double the estimated value of the contract, calculated in relation to the reference period of the same, except in adequately justified circumstances relating to the specific risks associated with nature of the services and supplies, object of the assignment. The contracting authority, where it requires a minimum annual turnover, indicates the reasons for this in the tender documents. For contracts divided into lots, this paragraph applies to each single lot. However, the contracting authorities may set the minimum annual turnover that economic operators must have with reference to groups of lots in the event that the successful tenderer is awarded several lots to be carried out simultaneously. If contracts based on a framework agreement are to be awarded following the reopening of the tender, the requirement of maximum annual turnover referred to in the first sentence of this paragraph is calculated on the basis of the maximum expected value of the specific contracts that will be performed simultaneously, if known, otherwise based on the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum annual turnover requirement is calculated on the basis of the maximum expected value of the specific contracts to be awarded under that system. the requirement of the maximum annual turnover referred to in the first sentence of this paragraph is calculated on the basis of the maximum expected value of the specific contracts that will be executed at the same time, if known, otherwise on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum annual turnover requirement is calculated on the basis

of the maximum expected value of the specific contracts to be awarded under that system. the requirement of the maximum annual turnover referred to in the first sentence of this paragraph is calculated on the basis of the maximum expected value of the specific contracts that will be executed at the same time, if known, otherwise on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum annual turnover requirement is calculated on the basis of the maximum expected value of the specific contracts to be awarded under that system.

5-bis. In relation to the requirement referred to in paragraph 4, letter c), the adequacy of the insurance coverage offered is assessed on the basis of the insurance policy against professional risks owned by the economic operator and currently valid. In relation to insurance policies of an amount lower than the value of the contract, the contracting authorities may request that the offer be accompanied, under penalty of exclusion, by the undertaking by the insurance company to adjust the value of the insurance policy to that of the contract, in case of award.

(paragraph introduced by article 8, paragraph 5, letter c), of law no. 120 of 2020)

6. For service and supply contracts, for the selection criteria referred to in paragraph 1, letter c), the contracting authorities may request requirements to ensure that economic operators have the human and technical resources and experience necessary to perform the contract with an adequate quality standard. In the procurement procedures for supplies that require siting or installation works, services or works, the professional ability of economic operators to provide these services or to carry out the installation or works is assessed with reference to their competence, efficiency, experience and reliability. The information requested cannot exceed the subject of the contract; the administration must, however, take into account the

7. Without prejudice to the qualification system referred to in Article 84 as well as the provisions regarding preliminary documentary evidence in Article 85, the demonstration of the requirements referred to in paragraph 1, letters b) and c) is provided, depending on the nature, of the quantity or importance and use of the supplies or services, using the means of proof referred to in article 86, paragraphs 4 and 5.

8. The contracting authorities indicate the conditions of participation required, which can be expressed as minimum levels of ability, together with the appropriate means of proof, in the call for tenders or in the invitation to confirm interest, and carry out the formal and substantial verification of the production capacities., technical and professional skills, including human resources, organic to the company, as well as the activities actually performed. For the subjects referred to in article 45, paragraph 2, letters d), e), f) and g), any measures in which the same requisites must be possessed by the single participating competitors are indicated in the announcement.[In any case, the agent must possess the requisites and perform the services by a majority.] The notices and invitation

letters may not contain further prescriptions under penalty of exclusion from those provided for by this code and by other provisions of the law in force. However, these prescriptions are null and void.

(the third period must be considered expelled from the legal system by virtue of the ruling of the Court of Justice of the EU of 28 April 2022, case C-642-20)

9. The shortcomings of any formal element of the application can be remedied through the preliminary aid procedure referred to in this paragraph. In particular, in the event of lack, incompleteness and any other essential irregularity of the elements and of the single European tender document referred to in article 85, with the exception of those relating to the economic offer and the technical offer, the contracting authority assigns the bidder a term, not exceeding ten days, for the necessary declarations to be made, integrated or regularized, indicating their content and the subjects who must give. In case of useless expiry of the regularization period, the competitor is excluded from the race. Deficiencies in the documentation that do not allow the identification of the content or of the person responsible for the same constitute essential irregularities that cannot be remedied.

10. The company rating system and related bonuses have been set up at ANAC, which manages its management, for which the Authority issues specific certification to economic operators, upon request. The aforementioned system is connected to reputational requirements assessed on the basis of qualitative and quantitative, objective and measurable indices, as well as on the basis of definitive assessments which express the reliability of the company. ANAC defines the reputational requirements and the evaluation criteria of the same and the criteria relating to the evaluation of the impact generated pursuant to article 1, paragraph 382, letter b), of the law of 28 December 2015, n. 208, even if the bidder is a person other than benefit companies, as well as the procedures for issuing the related certification, through guidelines adopted within three months from the date of entry into force of this provision. The guidelines referred to in the previous period also establish an administrative system, regulated under the direction of ANAC, of penalties and bonuses for the mandatory reporting of extortion and corruption requests by companies holding public tenders, including subcontractors and companies supplying materials, works and services, also providing for a specific sanctioning regime in cases of omitted or late reporting. The reputational requirements underlying the business rating referred to in this paragraph take into account, in particular, of the previous conduct of the company, with reference to the failure to use the preliminary investigation, the application of the provisions on the mandatory reporting of extortion and corruption requests, as well as compliance with the times and costs in the execution of contracts and the impact and the outcome of the dispute both in the participation in the tender procedures and in the contract execution phase. For the calculation of the business rating, the behavior of economic operators in the credit procedures started after the entry into force of this provision is taken into account.

(paragraph thus amended, in the third sentence, by Art.49, paragraph 1-bis, letter a), of decree-law no. 124 of 2019, converted by law no. 157 of 2019)

- 50 See as well in the Procurement Code 2022 - Text of Legislative Decree No. 50/2016 last updated by Law Decree No. 17/2022, converted, with amendments, by Law No. 34/2022/*Codice degli Appalti 2022 – Testo del D.Lgs. n. 50/2016 aggiornato, da ultimo, dal D.L. n. 17/2022, convertito, con modificazioni, dalla Legge n. 34/2022.*

(2) Investigative powers

(a) Investigative powers in the area of customs duties and VAT (General Tax Code)

- 51 The investigative powers are vested to special bodies, the Tax Revenue Agency and the Customs Agency.

(aa) VAT area

- 52 Inspections might be carried out by virtue of Art. 35 LAW 7 January 1929, n. 4.⁴¹²

To ensure compliance with the requirements imposed by laws or regulations in financial matters, the officers or the tax police officers have the right to access any time in public establishments and in every room used as a an industrial or commercial company and carry out checks and searches.

- 53 *Guardia di Finanza* is competent to carry out inspections in the VAT area:

Article 2 (Budget Protection)⁴¹³ **Legislative Decree 19 March 2001, n. 68** 1. Without prejudice to the tasks provided for by Article 1 of Law No. 189 of 23 April 1959 and by

⁴¹² Weber 2003, pp. 167 et seq.

⁴¹³ **Art. 2 (Tutela del bilancio) DECRETO LEGISLATIVO 19 marzo 2001, n. 68 Adeguamento dei compiti del Corpo della Guardia di finanza, a norma dell'articolo 4 della legge 31 marzo 2000, n. 78.**

1. Fermi restando i compiti previsti dall'articolo 1 della legge 23 aprile 1959, n. 189, e dalle altre leggi e regolamenti vigenti, il Corpo della Guardia di finanza assolve le funzioni di polizia economica e finanziaria a tutela del bilancio pubblico, delle regioni, degli enti locali e dell'Unione europea.

2. A tal fine, al Corpo della Guardia di finanza sono demandati compiti di prevenzione, ricerca e repressione delle violazioni in materia di:

a) imposte dirette e indirette, tasse, contributi, monopoli fiscali e ogni altro tributo, di tipo erariale o locale;
b) diritti doganali, di confine e altre risorse proprie nonche' uscite del bilancio dell'Unione europea;
c) ogni altra entrata tributaria, anche a carattere sanzionatorio o di diversa natura, di spettanza erariale o locale;
d) attivita' di gestione svolte da soggetti privati in regime concessorio, ad espletamento di funzioni pubbliche inerenti la potesta' amministrativa d'imposizione;
e) risorse e mezzi finanziari pubblici impiegati a fronte di uscite del bilancio pubblico nonche' di programmi pubblici di spesa;
f) entrate ed uscite relative alle gestioni separate nel comparto della previdenza, assistenza e altre forme obbligatorie di sicurezza sociale pubblica;
g) demanio e patrimonio dello Stato, ivi compreso il valore aziendale netto di unita' produttive in via di privatizzazione o di dismissione;

the other laws and regulations in force, the Guardia di Finanza Corps shall perform the economic and financial police functions for the protection of the public budget, of the regions, of the local authorities and of the European Union.

2. To this end, the Corp of the Guardia di Finanza is entrusted with the tasks of prevention, research and repression of violations in the matter of a) direct and indirect taxes, levies, contributions, tax monopolies and any other tax, of a State or local nature; **b) customs duties, border duties and other own resources, as well as expenditure of the budget of the European Union;** c) **any other tax revenue, also of a sanctioning nature or of a different nature**, of State or local nature d) management activities carried out by private entities under a concessionary regime, for the performance of public functions inherent to the administrative power of taxation; e) public financial resources and means used for public budget expenditures as well as public expenditure programmes f) revenues and expenditures relating to the separate management of social security, assistance and other compulsory forms of public social security; g) state property and assets, including the net enterprise value of production units undergoing privatisation or disposal; **h) domestic, European and foreign currency, securities and means of payment, as well as financial and capital movements** (i) financial and securities markets, including the exercise of credit and the solicitation of public savings; (l) copyright, know-how, patents, trademarks and other industrial property rights, with respect to their exercise and economic exploitation; (m) **any other national or European Union economic and financial interest**.

3. The Corps of the Guardia di Finanza, also making use of its air-naval device, exercises at sea, without prejudice to the provisions of article 2, first paragraph, letter c), of the law of 31 December 1982, n. 979 by articles 200, 201 and 202 of the navigation code and international agreements, and the institutional tasks conferred by the laws in force

h) valute, titoli, valori e mezzi di pagamento nazionali, europei ed esteri, nonché movimenti finanziari e di capitali;

i) mercati finanziari e mobiliari, ivi compreso l'esercizio del credito e la sollecitazione del pubblico risparmio;

l) diritti d'autore, know-how, brevetti, marchi ed altri diritti di proprietà industriale, relativamente al loro esercizio e sfruttamento economico;

m) ogni altro interesse economico-finanziario nazionale o dell'Unione europea.

3. Il Corpo della Guardia di finanza, avvalendosi anche del proprio dispositivo aeronavale, esercita in mare, fatto salvo quanto previsto dall'articolo 2, primo comma, lettera c), della legge 31 dicembre 1982, n. 979 dagli articoli 200, 201 e 202 del codice della navigazione e dagli accordi internazionali, e i compiti istituzionali conferiti dalle leggi vigenti al Corpo delle Capitanerie di porto, funzioni di polizia economica e finanziaria in via esclusiva richiedendo la collaborazione di altri organismi per l'esercizio dei propri compiti, nonché, fermo restando quanto previsto dalla legge 10 aprile 1981, n. 121, per quanto concerne il coordinamento delle forze di polizia in materia di ordine e di sicurezza pubblica, attività di contrasto dei traffici illeciti.

4. Ferme restando le norme del codice di procedura penale e delle altre leggi vigenti, i militari del Corpo, nell'espletamento dei compiti di cui al comma 2, si avvalgono delle facoltà e dei poteri previsti dagli articoli 32 e 33 del decreto del Presidente della Repubblica 29 settembre 1973, n. 600, e successive modificazioni, 51 e 52 del decreto del Presidente della Repubblica 26 ottobre 1972, n. 633, e successive modificazioni.

5. Ai fini dell'assolvimento dei compiti di cui al presente articolo continuano ad applicarsi, per i fatti che possono configurarsi come violazioni fiscali, le disposizioni di cui agli articoli 36, ultimo comma, del decreto del Presidente della Repubblica 29 settembre 1973, n. 600, aggiunto dall'articolo 19, comma 1, lettera d) della legge 30 dicembre 1991, n. 413, e 32 della legge 7 gennaio 1929, n. 4.

on the Port Authority Corps, economic and financial police functions exclusively by requesting the collaboration of other bodies for the exercise of their duties, as well as, without prejudice to the provisions of the law of 1 April 1981, n. 121, as regards the coordination of the police forces in matters of public order and security, activities to contrast illicit trafficking.

4. Without prejudice to the provisions of the code of criminal procedure and other laws in force, the soldiers of the Corps, in carrying out the tasks referred to in paragraph 2, make use of the faculties and powers provided for in articles 32 and 33 of the decree of President of the Republic 29 September 1973, n. 600, and subsequent amendments, 51 and 52 of the decree of the President of the Republic October 26, 1972, n. 633, and subsequent amendments.

5. For the purposes of carrying out the tasks referred to in this article, the provisions referred to in articles 36, last paragraph, of the decree of the President of the Republic of 29 September 1973, no. 600, added by article 19, paragraph 1, letter d) of law no. 413, and 32 of the law 7 January 1929, n. 4.

54 In the VAT area the competences are as well explicitly vested to the VAT offices, which ensures that they might or are at least able to discover administrative irregularities:

Article 51 Attribution and powers of the value added tax offices. Decree n. 633

The value added tax offices check the declarations presented and the payments made by the taxpayers, detect any omissions and check and collect the taxes or higher taxes due;⁴¹⁴ supervise compliance with the obligations relating to the invoicing and recording

⁴¹⁴ **Art. 51 Decreto del Presidente della Repubblica del 26/10/1972 n. 633 -**

Gli uffici dell'imposta sul valore aggiunto controllano le dichiarazioni presentate e i versamenti eseguiti dai contribuenti, ne rilevano l'eventuale omissione e provvedono all'accertamento e alla riscossione delle imposte o maggiori imposte dovute; vigilano sull'osservanza degli obblighi relativi alla fatturazione e registrazione delle operazioni e alla tenuta della contabilita' e degli altri obblighi stabiliti dal presente decreto; provvedono alla irrogazione delle pene pecuniarie e delle soprattasse e alla presentazione del rapporto all'autorita' giudiziaria per le violazioni sanzionate penalmente. Il controllo delle dichiarazioni presentate e l'individuazione dei soggetti che ne hanno omesso la presentazione sono effettuati sulla base di criteri selettivi fissati annualmente dal Ministro delle Finanze che tengano anche conto della capacita' operativa degli uffici stessi. I criteri selettivi per l'attivita' di accertamento di cui al periodo precedente, compresa quella a mezzo di studi di settore, sono rivolti prioritariamente nei confronti dei soggetti diversi dalle imprese manifatturiere che svolgono la loro attivita' in conto terzi per altre imprese in misura non inferiore al 90 per cento.

Per l'adempimento dei loro compiti gli uffici possono:

- 1) procedere all'esecuzione di accessi, ispezioni e verifiche ai sensi dell'Art. 52;
- 2) invitare i soggetti che esercitano imprese, arti o professioni, indicandone il motivo, a comparire di persona o a mezzo di rappresentanti per esibire documenti e scritture, ad esclusione dei libri e dei registri in corso di scritturazione, o per fornire dati, notizie e chiarimenti rilevanti ai fini degli accertamenti nei loro confronti anche relativamente ai rapporti ed alle operazioni, i cui dati, notizie e documenti siano stati acquisiti a norma del numero 7) del presente comma, ovvero rilevati a norma dell'Art. 52, ultimo comma, o dell'articolo 63, primo comma, o acquisiti ai sensi dell'articolo 18, comma 3, lettera b), del decreto legislativo 26 ottobre 1995, n. 504. I dati ed elementi attinenti ai rapporti ed alle operazioni acquisiti e rilevati rispettivamente a norma del numero 7) e dell'articolo 52, ultimo comma, o dell'articolo 63, primo comma, o acquisiti ai sensi dell'articolo 18, comma 3, lettera

of transactions and the keeping of accounts and the other obligations established by this decree; provide for the imposition of pecuniary penalties and surcharges and for the presentation of the report to the judicial authority for violations punishable by criminal law. The control of the submitted declarations and the identification of the subjects who have omitted their presentation are carried out on the basis of selective criteria established annually by the Minister of Finance which also take into account the operational capacity of the offices themselves. The selection criteria for the verification activity referred to in the previous period, including that by means of sector studies, are primarily aimed at subjects other than manufacturing companies that carry out their activities on behalf of third parties for other companies to an extent not less than 90 per cent.

For the fulfilment of their duties, the offices may:

- 1) proceed with the execution of accesses, inspections and verifications pursuant to Art. 52;
- 2) invite individuals who exercise businesses, arts or professions, indicating the reason, to appear in person or by means of representatives to exhibit documents and writings, with the exception of books and registers in the course of writing, or to provide data, news and clarifications relevant for the purposes of the investigations against them also in relation to the relationships and operations, the data, information and documents of which have been acquired pursuant to number 7) of this paragraph, or detected pursuant to Art. 52, last paragraph, or of article 63, first paragraph, or acquired pursuant to article 18, paragraph 3, letter b), of Legislative Decree no. 504. The data and elements pertaining to the relationships and transactions acquired and detected respectively pursuant to number 7) and article 52, last paragraph, or article 63, first paragraph, or acquired pursuant to article 18, paragraph 3, letter b), of the Legislative Decree 26 October 1995, n. 504, are placed at the basis of the corrections and assessments provided for by Art. 54 and 55 if the taxpayer does not prove that he has taken them into account in the returns or that they do not refer to taxable transactions; both the taxable transactions and the purchases are considered to be carried out at the rate mainly applied or that should have been applied. The requests made and the replies received must be recorded in accordance with the sixth paragraph of article 52;
- 3) send to subjects who exercise businesses,

b), del decreto legislativo 26 ottobre 1995, n. 504, sono posti a base delle rettifiche e degli accertamenti previsti dagli artt. 54 e 55 se il contribuente non dimostra che ne ha tenuto conto nelle dichiarazioni o che non si riferiscono ad operazioni imponibili; sia le operazioni imponibili sia gli acquisti si considerano effettuati all'aliquota in prevalenza rispettivamente applicata o che avrebbe dovuto essere applicata. Le richieste fatte e le risposte ricevute devono essere verbalizzate a norma del sesto comma dell'articolo 52; 3) inviare ai soggetti che esercitano imprese, arti e professioni, con invito a restituirli compilati e firmati, questionari relativi a dati e notizie di carattere specifico rilevanti ai fini dell'accertamento, anche nei confronti di loro clienti e fornitori;

4) invitare qualsiasi soggetto ad esibire o trasmettere, anche in copia fotostatica, documenti e fatture relativi a determinate cessioni di beni o prestazioni di servizi ricevute ed a fornire ogni informazione relativa alle operazioni stesse;

arts and professions, with an invitation to return them completed and signed, questionnaires relating to data and information of a specific nature relevant for the purposes of the assessment, also towards their customers and suppliers;

4)⁴¹⁵ invite any person to exhibit or transmit, even in photocopy, documents and invoices relating to certain sales of goods or services received and to provide any information relating to the operations themselves;

⁴¹⁵ 5) richiedere agli organi e alle Amministrazioni dello Stato, agli enti pubblici non economici, alle società ed enti di assicurazione ed alle società ed enti che effettuano istituzionalmente riscossioni e pagamenti per conto terzi la comunicazione, anche in deroga a contrarie disposizioni legislative, statutarie o regolamentari, di dati e notizie relativi a soggetti indicati singolarmente o per categorie. Alle società ed enti di assicurazione, per quanto riguarda i rapporti con gli assicurati del ramo vita, possono essere richiesti dati e notizie attinenti esclusivamente alla durata del contratto di assicurazione, all'ammontare del premio e alla individuazione del soggetto tenuto a corrisponderlo. Le informazioni sulla categoria devono essere fornite, a seconda della richiesta, cumulativamente o specificamente per ogni soggetto che ne fa parte. Questa disposizione non si applica all'Istituto centrale di statistica e agli ispettorati del lavoro per quanto riguarda le rilevazioni loro commesse dalla legge e, salvo il disposto del n. 7), alle banche, alla società Poste italiane Spa, per le attività finanziarie e creditizie, alle società ed enti di assicurazione per le attività finanziarie, agli intermediari finanziari, alle imprese di investimento, agli organismi di investimento collettivo del risparmio, alle società di gestione del risparmio e alle società fiduciarie;

6) richiedere copie o estratti degli atti e dei documenti depositati presso i notai, i procuratori del registro, i conservatori dei registri immobiliari e gli altri pubblici ufficiali;

6-bis) richiedere, previa autorizzazione del direttore centrale dell'accertamento dell'Agenzia delle entrate o del direttore regionale della stessa, ovvero, per il Corpo della guardia di finanza, del comandante regionale, ai soggetti sottoposti ad accertamento, ispezione o verifica il rilascio di una dichiarazione contenente l'indicazione della natura, del numero e degli estremi identificativi dei rapporti intrattenuti con le banche, la società Poste italiane Spa, gli intermediari finanziari, le imprese di investimento, gli organismi di investimento collettivo del risparmio, le società di gestione del risparmio e le società fiduciarie, nazionali o stranieri, in corso ovvero estinti da non più di cinque anni dalla data della richiesta. Il richiedente e coloro che vengono in possesso dei dati raccolti devono assumere direttamente le cautele necessarie alla riservatezza dei dati acquisiti;

7) richiedere, previa autorizzazione del direttore centrale dell'accertamento dell'Agenzia delle entrate o del direttore regionale della stessa, ovvero, per il Corpo della guardia di finanza, del comandante regionale, alle banche, alla società Poste italiane Spa, per le attività finanziarie e creditizie, alle società ed enti di assicurazione per le attività finanziarie, agli intermediari finanziari, alle imprese di investimento, agli organismi di investimento collettivo del risparmio, alle società di gestione del risparmio e alle società fiduciarie, dati, notizie e documenti relativi a qualsiasi rapporto intrattenuto od operazione effettuata, ivi compresi i servizi prestati, con i loro clienti, nonché alle garanzie prestate da terzi o dagli operatori finanziari sopra indicati e le generalità dei soggetti per i quali gli stessi operatori finanziari abbiano effettuato le suddette operazioni e servizi o con i quali abbiano intrattenuto rapporti di natura finanziaria. Alle società fiduciarie di cui alla legge 23 novembre 1939, n. 1966, e a quelle iscritte nella sezione speciale dell'albo di cui all'articolo 20 del testo unico delle disposizioni in materia di intermediazione finanziaria, di cui al decreto legislativo 24 febbraio 1998, n. 58, può essere richiesto, tra l'altro, specificando i periodi temporali di interesse, di comunicare le generalità dei soggetti per conto dei quali esse hanno detenuto o amministrato o gestito beni, strumenti finanziari e partecipazioni in imprese, inequivocamente individuati. La richiesta deve essere indirizzata al responsabile della struttura accentrata, ovvero al responsabile della sede o dell'ufficio destinatario che ne dà notizia immediata al soggetto interessato; la relativa risposta deve essere inviata al titolare dell'ufficio precedente

7-bis) richiedere, con modalità stabilite con decreto di natura non regolamentare del Ministro dell'economia e delle finanze, da adottare d'intesa con l'Autorità di vigilanza in coerenza con le regole europee e internazionali in materia di vigilanza e, comunque, previa autorizzazione del direttore centrale dell'accertamento dell'Agenzia delle entrate o del direttore regionale della stessa, ovvero, per il Corpo della guardia di finanza, del comandante regionale, ad autorità ed enti, notizie, dati, documenti e informazioni di natura creditizia, finanziaria e assicurativa, relativi alle attività di controllo e di vigilanza svolte dagli stessi, anche in deroga a specifiche disposizioni di legge.

- 5) require the bodies and administrations of the state, non-economic public bodies, insurance companies and bodies and companies and bodies that institutionally carry out collections and payments on behalf of third parties, to communicate, also in derogation of contrary legislative provisions, statutory or regulatory, data and information relating to individuals indicated individually or by categories. With regard to relations with life insurance policyholders, data and information relating exclusively to the duration of the insurance contract, the amount of the premium and the identification of the person required to pay it may be requested from insurance companies and entities. Category information must be provided, according to the request, cumulatively or specifically for each subject that is part of it. This provision does not apply to the Central Statistical Institute and to the labour inspectorates as regards the surveys committed to them by law and, without prejudice to the provisions of n. 7), to banks, to Poste Italiane Spa, for financial and credit activities, to insurance companies and entities for financial activities, to financial intermediaries, to investment companies, to collective savings investment organizations, to the savings management companies and to the trust companies; Central Statistical Institute and labour inspectorates with regard to the surveys committed to them by law and, without prejudice to the provisions of no. 7), to banks, to Poste Italiane Spa, for financial and credit activities, to insurance companies and entities for financial activities, to financial intermediaries, to investment companies, to collective savings investment organizations, to the savings management companies and to the trust companies; Central Statistical Institute and labour inspectorates with regard to the surveys committed to them by law and, without prejudice to the provisions of no. 7), to banks, to Poste Italiane Spa, for financial and credit activities, to insurance companies and entities for financial activities, to financial intermediaries, to investment companies, to collective savings investment organizations, to the savings management companies and to the trust companies;
- 6) request copies or extracts of the deeds and documents filed with notaries, registry prosecutors, real estate registrars and other public officials;
- 6-bis) request, subject to the authorisation of the central director of the assessment of the Revenue Agency or of the regional director of the same, or, for the Financial Guard

Gli inviti e le richieste di cui al precedente comma devono essere fatti a mezzo di raccomandata con avviso di ricevimento fissando per l'adempimento un termine non inferiore a quindici giorni ovvero, per il caso di cui al n. 7), non inferiore a trenta giorni. Il termine puo' essere prorogato per un periodo di venti giorni su istanza dell'operatore finanziario, per giustificati motivi, dal competente direttore centrale o direttore regionale per l'Agenzia delle entrate, ovvero, per il Corpo della guardia di finanza, dal comandante regionale. Si applicano le disposizioni dell'Art. 52 del decreto del Presidente della Repubblica 29 settembre 1973, n. 600, e successive modificazioni.

Le richieste di cui al secondo comma, numero 7), nonche' le relative risposte, anche se negative, sono effettuate esclusivamente in via telematica. Con provvedimento del direttore dell'Agenzia delle entrate sono stabilite le disposizioni attuative e le modalita' di trasmissione delle richieste, delle risposte, nonche' dei dati e delle notizie riguardanti i rapporti e le operazioni indicati nel citato numero 7).

Per l'inottemperanza agli inviti di cui al secondo comma, numeri 3) e 4), si applicano le disposizioni di cui ai commi terzo e quarto dell'articolo 32 del decreto del Presidente della Repubblica 29 settembre 1973, n. 600, e successive modificazioni.

Corps, of the regional commander, to the subjects subjected to assessment, inspection or verification the issue of a declaration containing the indication of the nature, number and identification details of the relationships with banks, the Poste Italiane Spa company, financial intermediaries, investment firms, collective investment schemes, companies management of savings and fiduciary companies, national or foreign, in progress or extinguished for no more than five years from the date of the request. The applicant and those who come into possession of the data collected must directly take the necessary precautions for the confidentiality of the data acquired;

to the guarantees given by third parties or by the financial operators indicated above and the generalities of the subjects for whom the same financial operators have carried out the aforementioned transactions and services or with whom they have had financial relationships. To the trust companies referred to in law 23 November 1939, n. 1966, and to those registered in the special section of the register referred to in article 20 of the consolidated text of the provisions on financial intermediation, as per Legislative Decree no. 58, among other things, specifying the time periods of interest, may be required to communicate the details of the subjects on behalf of which they have held or administered or managed unequivocally identified assets, financial instruments and shareholdings in companies. The request must be addressed to the head of the centralized structure, or to the head of the recipient office or office who immediately informs the interested party; the relative reply must be sent to the holder of the proceeding office;

7-bis) to request, with modalities established by non-regulatory decree of the Minister of Economy and Finance, to be adopted in agreement with the Supervisory Authority in accordance with European and international rules on supervision and, in any case, subject to the authorisation of the central director of the assessment of the Revenue Agency or the regional director of the same, or, for the Financial Guard Corps, the regional commander, to authorities and entities, news, data, documents and information of a credit, financial and insurance nature, relating to the activities of control and supervision performed by the same, also in derogation to specific provisions of law.

The invitations and requests referred to in the preceding paragraph must be made by registered letter with acknowledgment of receipt, setting a deadline of not less than fifteen days for the fulfilment or, for the case referred to in no. 7), not less than thirty days. The term can be extended for a period of twenty days at the request of the financial operator, for justified reasons, by the competent central director or regional director for the Revenue Agency, or, for the Guard Corps of finance, by the regional commander.. The provisions of Art. 52 of the decree of the President of the Republic of 29 September 1973, n. 600, and subsequent amendments. The requests referred to in the second paragraph, number 7), as well as the relative replies, even if negative, are made exclusively electronically. The implementing provisions and the modalities for the transmission of requests, responses, as well as data and news regarding the relationships and operations indicated in the aforementioned number 7) are established by order of the director of the

Revenue Agency. For non-compliance with the invitations referred to in the second paragraph, numbers 3) and 4), the provisions referred to in the third and fourth paragraphs of article 32 of the decree of the President of the Republic of 29 September 1973, n. 600, and subsequent amendments.

Article 51a Powers and attributions of the value added tax offices.⁴¹⁶ **Decree n. 633**

The value added tax offices can request the documents, data and information indicated in n. 7) of Art. 51 based on the opinion of the departmental inspectorate for taxes and indirect taxes on business subject to the authorisation of the chairman of the territorially competent first degree tax commission and can access companies and credit institutions and the Postal Administration in accordance with the last paragraph of the Art. 52 subject to the authorisation of the same departmental inspector in the following cases:

a) when the taxpayer has not submitted the declaration referred to in Art. 28 and the office is in possession of information showing that in the relevant year it carried out taxable, non-taxable, non-taxable or tax-exempt transactions for amounts exceeding one hundred million lire;

⁴¹⁶ **Art. 51a Poteri e attribuzioni degli uffici dell'imposta sul valore aggiunto.**

In vigore dal 24/07/1982

Modificato da: Decreto del Presidente della Repubblica del 15/07/1982 n. 463 Articolo 5

Soppresso da: Legge del 30/12/1991 n. 413 Articolo 18

Gli uffici dell'imposta sul valore aggiunto, possono richiedere i documenti, i dati e le notizie indicati al n. 7) dell'Art. 51 su conforme parere dell'ispettorato compartimentale delle tasse e imposte indirette sugli affari previa autorizzazione del presidente della commissione tributaria di primo grado territorialmente competente e possono accedere presso le aziende e istituti di credito e l'Amministrazione postale a norma dell'ultimo comma dell'Art. 52 previa autorizzazione dello stesso ispettore compartimentale nelle seguenti ipotesi: a) quando il contribuente non ha presentato la dichiarazione di cui all'Art. 28 e l'ufficio e' in possesso di elementi dai quali risulta che nell'anno di competenza ha effettuato operazioni imponibili, non imponibili, non soggette o esenti da imposta per corrispettivi superiori a lire cento milioni; b) quando dagli atti e documenti di cui all'Art. 54, terzo comma, ovvero da altri elementi certi in possesso dell'ufficio risulta che il contribuente ha effettuato nel corso di un anno solare le operazioni indicate nella lettera a) per corrispettivi superiori al quadruplo di quelli dichiarati, sempre che la differenza sia superiore a lire cento milioni; c) quando, in ordine all'osservanza degli adempimenti contabili, ricorrono le ipotesi di cui al secondo comma, nn. 1) e 3), dell'Art. 55; la disposizione non si applica se dagli elementi in possesso degli uffici non risultano corrispettivi per operazioni di importo superiore a lire cento milioni; d) quando risulta che il contribuente ha emesso o utilizzato fatture per operazioni inesistenti; e) quando dagli elementi in possesso dell'ufficio risulta che l'ammontare dell'imposta detraibile o rimborsabile indicato nella dichiarazione annuale e' superiore di oltre un decimo a quella spettante e la differenza e' superiore a lire cento milioni. La richiesta puo' riguardare anche i conti successivi all'anno o agli anni cui si riferiscono i fatti indicati nel precedente comma e puo' essere estesa ai conti intestati al coniuge non legalmente ed effettivamente separato ed ai figli minori conviventi. Nel caso previsto dalla precedente lettera d), se le fatture sono state emesse o utilizzate da una societa' che esercita l'attivita' di cui agli artt. 2135 e 2195 del codice civile, la richiesta puo' essere estesa ai conti intestati ai soci delle societa' di fatto nonche' agli amministratori delle societa' in nome collettivo e in accomandita semplice in carica nel periodo o nei periodi di imposta in cui le fatture sono state emesse o utilizzate. Con le richieste e nel corso degli accessi indicati nel primo comma non possono essere rilevati dagli uffici documenti, dati e notizie relativi a soggetti diversi dal contribuente. Tali documenti, dati o notizie sono tuttavia utilizzabili ai fini fiscali se forniti dal contribuente o, autonomamente, dalle aziende e istituti di credito. L'ispettore compartimentale delle tasse e delle imposte indirette sugli affari deve esprimersi sulla richiesta di autorizzazione all'accesso formulata dagli uffici entro il termine di giorni quindici dalla richiesta stessa. Si applicano le disposizioni di cui al secondo comma dell'Art. 34 del decreto del Presidente della Repubblica 29 settembre 1973, n. 600, e successive modificazioni.

- b) when the deeds and documents referred to in Art. 54, third paragraph, or from other certain elements in the possession of the office, it appears that the taxpayer has carried out in the course of a calendar year the operations indicated in letter a) for fees higher than four times those declared, provided that the difference is greater than one hundred million lire;
- c) when, in relation to compliance with accounting requirements, they occur the hypotheses referred to in the second paragraph, nos. 1) and 3), of Art. 55; the provision does not apply if the information held by the offices does not indicate fees for transactions exceeding one hundred million lire;
- d) when it appears that the taxpayer has issued or used invoices for non-existent transactions;
- e) when the information in the possession of the office shows that the amount of the deductible or refundable tax indicated in the annual return is more than one-tenth higher than that due and the difference is greater than one hundred million lire. The request may also concern accounts subsequent to the to which the facts indicated in the previous paragraph refer and can be extended to accounts held in the name of the spouse who is not legally and effectively separated and to cohabiting minor children. In the case provided for by the previous letter d), if the invoices have been issued or used by a company that carries out the activity referred to in Articles 2135 and 2195 of the civil code, the request can be extended to the accounts held in the name of the shareholders of the de facto companies as well as to the administrators of the general partnerships and limited partnerships in office in the tax period or periods in which the invoices have been issued or used. With the requests and during the accesses indicated in the first paragraph, documents, data and news relating to subjects other than the taxpayer cannot be collected by the offices. However, these documents, data or news can be used for tax purposes if provided by the taxpayer or, independently, by companies and credit institutions. The departmental inspector of taxes and indirect taxes on business must express himself on the request for access authorisation formulated by the offices within fifteen days of the request. The provisions referred to in the second paragraph of Art. 34 of decree of the President of the Republic of 29 September 1973, n. 600, and subsequent amendments.

Article 52 Access, inspections, verifications. Decree of the President of the Republic dated 10/26/1972 n. 633

The value added tax offices can arrange for the access of employees of the Financial Administration to the premises intended for the exercise of commercial, agricultural, artistic or professional activities, as well as those used by non-commercial entities and those who enjoy of the benefits of the third sector code referred to in article 1, paragraph 2, letter b),⁴¹⁷ of law no. 106, to carry out documentary inspections, verifications and

⁴¹⁷ **Art. 52 Accessi, ispezioni, verifiche. Decreto del Presidente della Repubblica del 26/10/1972 n. 633 -**

In vigore dal 03/08/2017

Modificato da: Decreto legislativo del 03/07/2017 n. 117 Articolo 89

Gli uffici dell'imposta sul valore aggiunto possono disporre l'accesso di impiegati dell'Amministrazione finanziaria nei locali destinati all'esercizio di attività commerciali, agricole, artistiche o professionali, nonché in quelli utilizzati dagli enti non commerciali e da quelli che godono dei benefici di cui al codice del Terzo settore di cui all'articolo 1, comma 2, lettera b), della legge 6 giugno 2016, n. 106, per procedere ad ispezioni documentali, verificazioni e ricerche e ad ogni altra rilevazione ritenuta utile per l'accertamento dell'imposta e per la repressione dell'evasione e delle altre violazioni. Gli impiegati che eseguono l'accesso devono essere muniti di apposita autorizzazione che ne indica lo scopo, rilasciata dal capo dell'ufficio da cui dipendono. Tuttavia per accedere in locali che siano adibiti anche ad abitazione è necessaria anche l'autorizzazione del procuratore della Repubblica. In ogni caso, l'accesso nei locali destinati all'esercizio di arti e professioni dovrà essere eseguito in presenza del titolare dello studio o di un suo delegato.

L'accesso in locali diversi da quelli indicati nel precedente comma può essere eseguito, previa autorizzazione del procuratore della Repubblica, soltanto in caso di gravi indizi di violazioni delle norme del presente decreto, allo scopo di reperire libri, registri, documenti, scritture ed altre prove delle violazioni.

È in ogni caso necessaria l'autorizzazione del procuratore della Repubblica o dell'autorità giudiziaria più vicina per procedere durante l'accesso a perquisizioni personali e all'apertura coattiva di pieghi sigillati, borse, casseforti, mobili, ripostigli e simili e per l'esame di documenti e la richiesta di notizie relativamente ai quali è exceptio il segreto professionale ferma restando la norma di cui all'articolo 103 del codice di procedura penale.

L'ispezione documentale si estende a tutti i libri, registri, documenti e scritture, compresi quelli la cui tenuta e conservazione non sono obbligatorie, che si trovano nei locali in cui l'accesso viene eseguito, o che sono comunque accessibili tramite apparecchiature informatiche installate in detti locali.

I libri, registri, scritture e documenti di cui è rifiutata l'esibizione non possono essere presi in considerazione a favore del contribuente ai fini dell'accertamento in sede amministrativa o contenziosa. Per rifiuto di esibizione si intendono anche la dichiarazione di non possedere i libri, registri, documenti e scritture e la sottrazione di essi alla ispezione (1).

Di ogni accesso deve essere redatto processo verbale da cui risultino le ispezioni e le rilevazioni eseguite, le richieste fatte al contribuente o a chi lo rappresenta e le risposte ricevute. Il verbale deve essere sottoscritto dal contribuente o da chi lo rappresenta ovvero indicare il motivo della mancata sottoscrizione. Il contribuente ha diritto di averne copia.

I documenti e le scritture possono essere sequestrati soltanto se non è possibile riprodurle o farne constare il contenuto nel verbale, nonché in caso di mancata sottoscrizione o di contestazione del contenuto del verbale. I libri e i registri non possono essere sequestrati; gli organi procedenti possono eseguirne o farne eseguire copie o estratti, possono apporre nelle parti che interessano la propria firma o sigla insieme con la data e il bollo d'ufficio e possono adottare le cautele atte ad impedire l'alterazione o la sottrazione dei libri e dei registri.

Le disposizioni dei commi precedenti si applicano anche per l'esecuzione di verifiche e di ricerche relative a merci o altri beni viaggianti su autoveicoli e natanti adibiti al trasporto per conto di terzi.

In deroga alle disposizioni del settimo comma gli impiegati che procedono all'accesso nei locali di soggetti che si avvalgono di sistemi meccanografici, elettronici e simili, hanno facoltà di provvedere con mezzi propri all'elaborazione dei supporti fuori dei locali stessi qualora il contribuente non consenta l'utilizzazione dei propri impianti e del proprio personale.

Se il contribuente dichiara che le scritture contabili o alcune di esse si trovano presso altri soggetti deve esibire una attestazione dei soggetti stessi recante la specificazione delle scritture in loro possesso. Se l'attestazione non

researches and any other survey deemed useful for the assessment of the tax and for the repression of tax evasion and other violations. Employees who log in must have a specific authorisation indicating their purpose, issued by the head of the office they depend on. However, the authorisation of the public prosecutor is also required to access premises that are also used as homes. In any case, access to the premises intended for the exercise of arts and professions must be carried out in the presence of the owner of the studio or his delegate.

Access to premises other than those indicated in the previous paragraph may be carried out, subject to the authorisation of the public prosecutor, only in the event of serious indications of violations of the rules of this decree, in order to find books, registers, documents, writings and other evidence of violations.

In any case, the authorisation of the public prosecutor or the closest judicial authority is required to proceed during access to personal searches and the forced opening of sealed folds, bags, safes, furniture, closets and the like and for the examination of documents and the request for information relating to which professional secrecy is objected, without prejudice to the rule referred to in article 103 of the code of criminal procedure

The documentary inspection extends to all books, registers, documents and records, including those whose keeping and conservation are not mandatory, which are located in the premises where access is made, or which are in any case accessible through installed IT equipment in said premises.

The books, registers, deeds and documents whose exhibition is refused cannot be taken into consideration in favour of the taxpayer for the purposes of administrative or litigation assessment. By refusal to exhibit we also mean the declaration of not possessing the books, registers, documents and deeds and the removal of them from inspection (1). For each access, a report must be drawn up showing the inspections and surveys carried out, the requests made to the taxpayer or whoever represents him and the replies received. The report must be signed by the taxpayer or by his representative or indicate the reason for the failure to sign. The taxpayer has the right to have a copy.

Documents and deeds can be seized only if it is not possible to reproduce or show their content in the report, as well as in the event of failure to sign or contest the content of the report. Books and records cannot be confiscated; the proceeding bodies can make or have copies or extracts made, they can affix their signature or initials together with the

e' esibita e se il soggetto che l'ha rilasciata si oppone all'accesso o non esibisce in tutto o in parte le scritture si applicano le disposizioni del quinto comma.

Per l'esecuzione degli accessi presso le pubbliche amministrazioni e gli enti indicati al n. 5) dell'articolo 51 e presso gli operatori finanziari di cui al 7) dello stesso articolo 51, si applicano le disposizioni del secondo e sesto comma dell'articolo 33 del decreto del Presidente della Repubblica 29 settembre 1973, n. 600, e successive modificazioni.

(1) Ai sensi dell'Art. 6, comma 3 decreto legislativo 24 settembre 2015 n. 156 le disposizioni contenute nel presente comma "non si applicano a dati, notizie, atti, registri o documenti richiesti dall'amministrazione nel corso dell'istruttoria delle istanze di interpello".

date and the official stamp in the parts that interest them, and they can take precautions to prevent the alteration or theft of the books and of the registers.

The provisions of the preceding paragraphs also apply to the execution of checks and searches relating to goods or other goods in transit on motor vehicles and boats used for transport on behalf of third parties.

Notwithstanding the provisions of the seventh paragraph, employees who access the premises of subjects who make use of mechanographic, electronic and similar systems, have the right to process the supports outside the premises themselves if the taxpayer does not allow the use of its facilities and personnel.

If the taxpayer declares that the accounting records or some of them are found with other subjects, he must produce a certificate from the subjects themselves specifying the records in their possession. If the certificate is not exhibited and if the person who issued it opposes access or does not exhibit the documents in whole or in part, the provisions of the fifth paragraph apply.

For the execution of the accesses to the public administrations and the bodies indicated in n. 5) of article 51 and to the financial operators referred to in 7) of the same article 51, the provisions of the second and sixth paragraphs of article 33 of the decree of the President of the Republic no. 600, and subsequent amendments.

(1) Pursuant to Art. 6, paragraph 3 Legislative Decree 24 September 2015 n. 156 the provisions contained in this paragraph “do not apply to data, news, deeds, registers or documents requested by the administration during the investigation of the requests for ruling”.

Under **Article 51a of Decree 633/1972** the VAT offices have the power, with prior authorisation from the departmental inspector and in some cases the chairman of the competent tax commission, to **request documents and financial information** and to carry out access to companies, credit institutions and the postal administration. These powers are limited to certain cases. They apply when a taxpayer has not filed the VAT return but evidence shows that taxable or exempt transactions of more than one hundred million lire were carried out. They also apply when evidence shows that the actual turnover in a year was more than four times higher than what was declared and the difference is more than one hundred million lire. They apply when serious accounting irregularities under Article 55 are present and the transactions exceed one hundred million lire. They also apply when the taxpayer has issued or used invoices for non-existent transactions. Finally they apply when the annual VAT return shows deductible or refundable tax more than ten percent higher than what is actually due and the difference is greater than one hundred million lire. The requests may extend to later accounts, to the accounts of a spouse who is not legally or effectively separated and to those of cohabiting minor children. In cases involving false invoices the requests may also extend to the accounts of

shareholders in de facto companies and to administrators of partnerships during the relevant periods. The VAT offices may not collect information about unrelated third parties during these accesses, but information voluntarily provided by the taxpayer or by banks and companies may still be used for tax purposes. The departmental inspector must decide on requests for authorisation within fifteen days, and the general rules on access to bank data set out in the tax code also apply.

56 Article 56⁴¹⁸ Notification and motivation of the investigations

The adjustments and assessments are notified to taxpayers, by means of motivated notices, in the manner established for notifications regarding income taxes, by special messengers authorised by the value added tax offices or by the municipal messengers.

In the notices relating to the adjustments referred to in Art. 54, the errors, omissions and false or inaccurate information on which the rectification and related evidence is based must be specifically indicated, under penalty of nullity. For omissions and inaccuracies presumptively inferred, the certain facts that give ground to the presumption must be indicated.

The notices relating to inductive assessments must indicate, under penalty of nullity, the taxable amount determined by the office, the rate or rates and deductions applied and the reasons for which the provisions of the first or second were deemed applicable. paragraph of Art. 55.

In the cases referred to in the fourth paragraph of Art. 54 and the third paragraph of Art. 55 must also indicate, under penalty of nullity, the reasons of danger for the collection of the tax.

⁴¹⁸ **Art. 56 Notificazione e motivazione degli accertamenti.**

Le disposizioni del presente articolo, come modificato dall'Art. 1 decreto legislativo 11 febbraio 2010 n. 18, si applicano alle operazioni effettuate dal 1 gennaio 2010.

Le rettifiche e gli accertamenti sono notificati ai contribuenti, mediante avvisi motivati, nei modi stabiliti per le notificazioni in materia di imposte sui redditi, da messi speciali autorizzati dagli uffici dell'imposta sul valore aggiunto o dai messi comunali.

Negli avvisi relativi alle rettifiche di cui all'Art. 54 devono essere indicati specificamente, a pena di nullità, gli errori, le omissioni e le false o inesatte indicazioni su cui è fondata la rettifica e i relativi elementi probatori. Per le omissioni e le inesattezze desunte in via presuntiva devono essere indicati i fatti certi che danno fondamento alla presunzione.

Negli avvisi relativi agli accertamenti induttivi devono essere indicati, a pena di nullità, l'imponibile determinato dall'ufficio, l'aliquota o le aliquote e le detrazioni applicate e le ragioni per cui sono state ritenute applicabili le disposizioni del primo o del secondo comma dell'Art. 55.

Nelle ipotesi di cui al quarto comma dell'Art. 54 e al terzo comma dell'Art. 55 devono essere inoltre indicate, a pena di nullità, le ragioni di pericolo per la riscossione dell'imposta.

La motivazione dell'atto deve indicare i presupposti di fatto e le ragioni giuridiche che lo hanno determinato. Se la motivazione fa riferimento ad un altro atto non conosciuto né ricevuto dal contribuente, questo deve essere allegato all'atto che lo richiama salvo che quest'ultimo non ne riproduca il contenuto essenziale. L'accertamento è nullo se non sono osservate le disposizioni di cui al presente comma.

I provvedimenti emanati ai sensi degli articoli 38-bis1, 38-bis2 e 38-ter possono essere notificati anche tramite mezzi elettronici.

The motivation of the act must indicate the factual conditions and the legal reasons that determined it. If the motivation refers to another act not known or received by the taxpayer, this must be attached to the document referring to it unless the latter reproduces its essential content. The assessment is void if the provisions of this paragraph are not observed.

The provisions issued pursuant to articles 38-bis1, 38-bis2 and 38-ter may also be notified by electronic means.

(bb) Custom Duties area

In the customs duties area the following powers may be exercised: Presidential Decree No. 43 of 23 January 1973, so-called *Testo Unico delle disposizioni legislative in materia doganale* (T.U.L.D.)/D.P.R. 23 gennaio 1973, n. 43, c.d. *Testo Unico delle disposizioni legislative in materia doganale* (T.U.L.D.).⁴¹⁹ **57**

Article 62 (Customs operations relating to goods arrived or shipped by sea) Presidential Decree No. 43 of 23 January 1973⁴²⁰ **58**

The Customs may permit Customs operations in respect of goods of all kinds arriving or sent by sea to be carried out on board ship, either before landing or after loading, where the following conditions are fulfilled

(a) the cargo of the ship or of each tank or hold consists of goods of unique quality and easy to recognise

(b) there is evidence from which it may be reasonably inferred that the quantity of cargo contained in the vessel or in each tank or hold corresponds to that stated in the cargo documents. The operation on board the ship may also be carried out when the recognition of the goods requires the analysis of samples thereof; in such cases the provisions of the preceding Article shall apply. The foreign goods nationalised on board the vessel, even if of foreign flag, instead of being unloaded, may proceed with the same vessel to

⁴¹⁹ See <https://www.normattiva.it/uri-res/N2Ls?urn:nir:presidente.repubblica:decreto:1973-01-23;43>. Accessed 30 June 2025.

⁴²⁰ **Art. 62. (Operazioni doganali relative a merci arrivate o spedite per via mare) D.P.R. 23 gennaio 1973, n. 43**

La dogana ha facoltà di consentire che le operazioni doganali relative a merci di ogni specie giunte o spedite per via di mare possano essere eseguite a bordo della nave, rispettivamente prima dello sbarco, o dopo lo imbarco, quando ricorrano le seguenti condizioni:

a) il carico della nave o di ciascun serbatoio o stiva sia costituito da merce di unica qualità e di facile riconoscimento

b) sussistano elementi dai quali possa fondatamente dedursi che la quantità di merce contenuta nella nave od in ciascun serbatoio o stiva corrisponda a quella risultante dai documenti relativi al carico. L'operazione a bordo della nave può essere effettuata anche quando per il riconoscimento della merce occorra procedere all'analisi di campioni di essa; in tali casi si rendono applicabili le disposizioni del precedente articolo. Le merci estere nazionalizzate a bordo della nave, anche se di bandiera straniera, anziché essere sbarcate possono proseguire con la medesima nave per altri porti dello Stato sotto osservanza delle disposizioni doganali prescritte per il cabotaggio. Le eventuali eccedenze riscontrate nel porto di sbarco sono considerate merci estere; per esse devono essere pagati i relativi diritti doganali, fatta salva l'applicazione di penalità, ove ne ricorrano gli estremi.

other ports of the State under observance of the customs provisions prescribed for cabotage. Any surplus found in the port of disembarkation shall be deemed to be foreign goods; the relevant customs duties shall be paid for them, without prejudice to the application of penalties, where appropriate.

Article 63 (Control visits)⁴²¹ Presidential Decree No. 43 of 23 January 1973

Before the goods are left at the disposal of the owner or the carrier, the heads of the customs offices or the officials delegated for this purpose may, on their own initiative, carry out occasional inspection visits, either on the goods already visited in whole or in part, or on those not visited in accordance with Article 59, third paragraph. The inspection visits must always be carried out when a reasoned request is made by the financial police pursuant to Article 21 and by the operators concerned. The provision of the first paragraph shall also apply to the taking of samples for analysis.

Article 65⁴²² (Settlement of disputes at customs offices) Decree No. 43 1973

If, in the course of the inspection, any dispute arises as to the description, value or origin of the goods declared or as to the tare weight or the treatment of the packages, the owner

⁴²¹ **Art. 63. (Visite di controllo) D.P.R. 23 gennaio 1973, n. 43**

Prima che le merci siano lasciate a disposizione del proprietario o del vettore, i capi degli uffici doganali od i funzionari all'uopo delegati possono procedere di propria iniziativa a visite di controllo saltuarie, sia sulle merci già visitate in tutto o in parte, sia su quelle non visitate a norma dell'Art. 59, terzo comma. Le visite di controllo devono essere sempre eseguite quando ne sia fatta motivata richiesta dai militari della guardia di finanza a norma dell'Art. 21 e dagli operatori interessati. La disposizione del primo comma si applica anche in materia di prelevamento di campioni per l'analisi

⁴²² **D.P.R. 23 gennaio 1973, n. 43**

Qualora, nel corso dell'accertamento sorga contestazione circa la qualificazione, il valore o l'origine della merce dichiarata ovvero circa il regime di tara od il trattamento degli imballaggi, il proprietario può chiedere che si proceda a visita di controllo a norma dell'Art. 63. Ove non richieda tale visita o non ne accetti il risultato, può chiedere che sia sentito il parere di due periti, uno dei quali da lui scelto fra quelli compresi nelle liste approvate dalla camera di commercio, industria, agricoltura ed artigianato, e l'altro designato dal capo della dogana. Il parere dei periti, anche se concorde, non è tuttavia vincolante per la dogana. Ciascuna delle due parti è tenuta a sostenere la spesa per il proprio perito; al perito designato dalla dogana la spesa è liquidata in base alla tariffa delle spese di perizia, approvata dal Ministro per le finanze. Su richiesta della camera di commercio, industria, agricoltura ed artigianato ed a spese della medesima può essere designato da ciascuna delle due parti un numero maggiore di periti. Sulla contestazione decide, con provvedimento motivato, il capo della dogana; la decisione deve essere subito notificata all'interessato. Se il proprietario della merce non intende accettare la decisione, nel termine perentorio di dieci giorni dalla notifica deve chiedere che si proceda alla redazione di apposito verbale. Il verbale, redatto in duplice esemplare entro un termine all'uopo fissato dalla dogana, è sottoscritto da entrambe le parti; uno degli esemplari è consegnato all'operatore interessato. Se questi per qualsiasi motivo non sottoscrive il verbale, si fa menzione di tale circostanza nel verbale stesso e si procede alla relativa notifica. Qualora per la risoluzione della insorta contestazione lo operatore non ne richieda il deferimento all'esame dei periti, il verbale viene redatto nel momento stesso in cui la contestazione è sorta. Contemporaneamente alla redazione del verbale e sempreché non si sia già provveduto in precedenza in applicazione del primo comma dell'Art. 61, si procede al prelevamento dei campioni con l'osservanza delle modalità indicate nell'articolo medesimo; ove non sia possibile, attesa la qualità della merce, prelevare i campioni, si supplisce con disegni, con fotografie o con una dettagliata descrizione fatta d'accordo fra le due parti ovvero da due periti da esse a ciò delegati. Dopo la redazione del verbale può essere autorizzato il rilascio della merce con l'osservanza della disposizione di cui al secondo comma dell'Art. 61; in tal caso, la cauzione è commisurata alla differenza fra i diritti che sarebbero dovuti secondo l'accertamento della dogana e quelli calcolati in base alla dichiarazione.

may request an inspection in accordance with Article 63. If he does not request such an examination or does not accept the result thereof, he may require the opinion of two experts, one of whom he shall choose from among those included in the lists approved by the Chamber of Commerce, Industry, Agriculture and Handicrafts, and the other designated by the Head of Customs.

The opinion of the experts, even if in agreement, shall not, however, be binding on the Customs. Each party shall bear the cost of its own expert; the expert appointed by the Customs shall be paid on the basis of the tariff of expert fees approved by the Minister for Finance. At the request of the Chamber of Commerce, Industry, Agriculture and Handicrafts and at the expense of the same, a greater number of experts may be appointed by either party.

The head of customs shall decide on the dispute by reasoned decision; the decision shall be notified immediately to the party concerned. If the owner of the goods does not intend to accept the decision, he shall, within a peremptory period of ten days from the notification, request that a special report be drawn up. The report, drawn up in duplicate within a period fixed for this purpose by the Customs, shall be signed by both parties; one of the copies shall be given to the trader concerned. If the operator fails to sign the report for any reason whatsoever, this shall be noted in the report and notification thereof shall be given. If the operator does not request that the dispute be referred to the experts for examination, the report shall be drawn up at the time the dispute arises.

Simultaneously with the drawing up of the report and provided that the first paragraph of Art. 61 has not already been done so, samples shall be taken in accordance with the procedures indicated in the same article; where it is not possible to take samples because of the quality of the goods, they shall be replaced by drawings, photographs or a detailed description made by agreement between the two parties or by two experts appointed by them. After the minutes have been drawn up the release of the goods may be authorised subject to the provisions of the second paragraph of Article 61; in this case the security shall be equal to the difference between the duty which would be payable according to the customs assessment and the duty calculated on the basis of the declaration.

Moreover Art. 64 of the same decree allows exceptions from the normal procedure in severe and urgent cases: **59**

Article 64 Presidential Decree No. 43 of 23 January 1973

In extraordinary cases of necessity and urgency and limited to the duration of such occurrences, the head of the customs district,⁴²³ on the proposal of the head of the customs

⁴²³ Art. 64. (Procedura eccezionale di accertamento) D.P.R. 23 gennaio 1973, n. 43

district and promptly informing the Ministry, may give instructions to the customs officers in charge, so that, without observing the normal procedures and with the adoption of appropriate precautions, the goods may have the customs result desired by the operators on the sole basis of the presentation of the declaration, accompanied by the prescribed documentation and the proof of payment or deposit of the customs duties on the goods. Even in such cases, the occasional controls provided for in the preceding Article may be carried out, where the need arises.

60 DECREE OF THE PRESIDENT OF THE REPUBLIC No 43 of 23 January 1973
Article 19⁴²⁴ Visits, inspections and checks on means of transport and baggage of people

Customs officials, to ensure compliance with the provisions established by customs laws and others laws whose application is delegated to customs, can proceed, directly or by means of the soldiers of the guard of finance, to the visit of the means of transport of any kind that cross the customs line at the customs areas or that circulate in the spaces themselves. When they exist well founded suspected irregularities the aforementioned means of transport may also be subjected to inspections or technical checks particularly careful aimed at ascertaining any concealments of goods.

The keeper of the vehicle is required to lend his own collaboration for the execution of the aforementioned checks, observing the provisions for this purpose issued by the customs authorities.

The provisions referred to in the previous paragraphs are also applied in against baggage and other objects in people's possession crossing the customs line at the spaces customs or circulating in the spaces themselves.

In casi straordinari di necessita' e di urgenza e limitatamente alla durata di tali evenienze il capo del compartimento doganale, su proposta del capo della circoscrizione doganale ed informando tempestivamente il Ministero, puo' impartire disposizioni ai funzionari doganali incaricati affinche', senza la osservanza delle normali procedure e con l'adozione di adeguate cautele, le merci abbiano l'esito doganale voluto dagli operatori sulla sola base della presentazione della dichiarazione, corredata della prescritta documentazione e della prova dell'avvenuto pagamento o cauzionamento dei diritti doganali gravanti sulle merci stesse. Anche in tali casi possono, ove se ne ravvisi la necessita', essere compiuti i controlli saltuari previsti nel precedente articolo.

⁴²⁴ **Art. 19.**

Visite, ispezioni e controlli sui mezzi di trasporto e sui bagagli delle persone I funzionari doganali, per assicurare l'osservanza delle disposizioni stabilite dalle leggi in materia doganale e dalle altre leggi la cui applicazione e' demandata alle dogane, possono procedere, direttamente od a mezzo dei militari della guardia di finanza, alla visita dei mezzi di trasporto di qualsiasi genere che attraversano la linea doganale in corrispondenza degli spazi doganali o che circolano negli spazi stessi. Quando sussistono fondati sospetti di irregolarita' i mezzi di trasporto predetti possono essere sottoposti anche ad ispezioni o controlli tecnici particolarmente accurati diretti ad accertare eventuali occultamenti di merci. Il detentore del veicolo e' tenuto a prestare la propria collaborazione per l'esecuzione delle verifiche predette, osservando le disposizioni a tal fine impartite dagli organi doganali. Le disposizioni di cui ai precedenti commi si applicano anche nei confronti dei bagagli e degli altri oggetti in possesso delle persone che attraversano la linea doganale in corrispondenza degli spazi doganali o che circolano negli spazi stessi.

(b) Investigative powers in the area of structural funds and internal policies

Besides the accounting competence of the Corte de Conti (see above, administrative provisions in the area of structural funds) the Guardia di Finanza has a special competence to investigate and provide for support to OLAF in the area of structural funds and internal policies. The competence of the *Guardia di Finanza* to investigate according to Art. 4 D.P.R. of 8. June 1982 no. 447 in this area is presented in the following:

61

Decree of the President of the Republic of 8. June 1982 no. 447 Implementation of directive (EEC) n. 77/435 relating to controls by the Member States of operations falling within the financing system of the European Agricultural Guidance and Guarantee Fund, Guarantee Section (EAGGF)⁴²⁵

Article 4⁴²⁶

The checks are carried out by officials of the Ministries of the Finance, agriculture and forestry and the treasury, for this purpose appointed by the respective central administrations concerned.

To carry out the checks referred to in the first paragraph, the Minister agriculture and forestry can make use of the organisms authorised to pay the costs for market interventions.

The officials, in carrying out their duties, make use of the cooperation of the tax police. For control purposes, the officials in charge have the right to access the company's registered office, as well as the premises used from the entrepreneur to the exercise of his activity.

The entrepreneur is obliged to supply, at the request of the employees to the controls, the commercial documents held by it, the correspondence relating to FIOGA operations, as well as to release extracts or copies of the documents themselves.

⁴²⁵ DECRETO DEL PRESIDENTE DELLA REPUBBLICA 8 giugno 1982, n. 447 Attuazione della direttiva (CEE) n. 77/435 relativa ai controlli, da parte degli Stati membri, delle operazioni che rientrano nel sistema di finanziamento del Fondo europeo agricolo di orientamento e di garanzia, sezione garanzia (F.E.O.G.A.)

⁴²⁶ **Art. 4.**

I controlli sono effettuati da funzionari dei Ministeri delle finanze, dell'agricoltura e delle foreste e del tesoro, all'uopo incaricati dalle rispettive amministrazioni centrali interessate.

Per l'esecuzione dei controlli di cui al primo comma, il Ministro dell'agricoltura e delle foreste puo' avvalersi degli organismi abilitati al pagamento delle spese per gli interventi di mercato.

I funzionari, nell'espletamento dell'incarico, si avvalgono della cooperazione della polizia tributaria.

Ai fini del controllo, i funzionari incaricati hanno facolta' di accedere nella sede legale dell'impresa, nonche' nei locali adibiti dall'imprenditore all'esercizio della sua attivita'.

L'imprenditore ha l'obbligo di fornire, a richiesta degli addetti ai controlli, i documenti commerciali da esso tenuti, la corrispondenza attinente alle operazioni FIOGA, nonche' di rilasciare estratti o copie dei documenti stessi.

- 62** Art. 13 Law 24.11.1981 no. 689⁴²⁷ in connection with Art. 4 Law 23.12.86 no. 898 for investigative powers in the area of EAGFL Guidance Section⁴²⁸ which was replaced by the European agricultural guarantee fund EAGF and the European Agricultural Fund for Rural Development EAFRD on 1 January 2007.⁴²⁹
- 63** The competent authorities for investigations in this area are authorities of the Ministry of Agriculture as well as the *Guardia di Finanza*.⁴³⁰ The Ministry of Agriculture and Forestry has competence by factual connection for fraud in the agricultural sector.⁴³¹ The Guardia di Finanza has comprehensive investigative powers under tax law.⁴³² Investigative powers are:
- 64**
- Requesting information from economic operator, Art. 13 para 1 Law no. 689/81
 - Requesting documents only allowed with judicial authorisation⁴³³
 - Searches only allowed to tax authorities; Searches of documents only allowed with judicial authorisation⁴³⁴; Investigation of violations of administrative laws the *polizia giudiziaria* has the powers listed here, as well as is allowed to conduct searches of premises (only with judicial authorisation) that do not belong to the private sphere. In this respect Art. 333 para 1. And Art. 334 para 2 CPP apply.⁴³⁵
 - Access to premises to find irregularities, Art. 13 para 1 Law no. 689/81
 - General controls of objects and operations, Art. 13 para. 1 Law no. 689/81 → such as observing nature of the goods or actual transactions; rough inspection of issued materials⁴³⁶
 - Conduct technical surveys in descriptive and photographic form, Conduct other technical activities, Seizure of items (within the possibilities of the CPC)
 - Taking samples, Art. 13, 15 Law no. 689/81, Assessments using signs, descriptions and photographs, other technical action including means for data processing and of control, such as making copies, Art. 13 Law no. 689/81

Article 12 Scope of application Law of decriminalisation/Law, 24/11/1981 n° 689

The provisions of this chapter are observed, as applicable and unless otherwise established, for all violations for which the administrative sanction of the payment of a sum

⁴²⁷ Weber 2003, p. 192

⁴²⁸ Weber 2003, pp. 193 et seq., 197.

⁴²⁹ <https://www.europarl.europa.eu/factsheets/de/sheet/106/die-finanzierung-der-gemeinsamen-agrarpolitik>. Accessed 30 June 2025.

⁴³⁰ Weber 2003, p. 196.

⁴³¹ Weber 2003, p. 196.

⁴³² Weber 2003, p. 196.

⁴³³ Weber 2003, p. 194.

⁴³⁴ Weber 2003, pp. 193 et seq.

⁴³⁵ Weber 2003, p. 196.

⁴³⁶ Weber 2003, p. 195.

of money is envisaged, even when this sanction is not provided in place of a criminal sanction. They do not apply to disciplinary violations.⁴³⁷

Section II Application Article 13⁴³⁸ Assessment deeds

The bodies responsible for monitoring compliance with the provisions for whose violation the administrative sanction of the payment of a sum of money is envisaged may, to ascertain the violations of their respective competence, obtain information and proceed to inspections of things and places other than private residence, to signalling, descriptive and photographic surveys and to any other technical operation.

They can also proceed with the precautionary seizure of things that may be subject to administrative confiscation, in the ways and with the limits with which the criminal procedure code allows seizure to the judicial police.

The seizure of the motor vehicle or vessel placed in circulation without being covered by compulsory insurance and of the vehicle in circulation without the registration document being issued for the same is always ordered.

The judicial police officers and agents can also proceed to ascertain the violations punished with the administrative sanction of the payment of a sum of money, who, in addition to exercising the powers indicated in the previous paragraphs, can proceed, when it is not possible to acquire otherwise the evidence, to searches in places other than a private residence, subject to the motivated authorisation of the magistrate of the place where the searches must be carried out. The provisions of the first paragraph of Art. 333 and the first and second paragraphs of Art. 334 of the criminal procedure code.

⁴³⁷ **Art. 12. Ambito di applicazione.**

Le disposizioni di questo capo si osservano, in quanto applicabili e salvo che non sia diversamente stabilito, per tutte le violazioni per le quali è prevista la sanzione amministrativa del pagamento di una somma di denaro, anche quando questa sanzione non è prevista in sostituzione di una sanzione penale. Non si applicano alle violazioni disciplinari.

⁴³⁸ **Sezione II**

Applicazione

Art. 13. Atti di accertamento.

Gli organi addetti al controllo sull'osservanza delle disposizioni per la cui violazione è prevista la sanzione amministrativa del pagamento di una somma di denaro possono, per l'accertamento delle violazioni di rispettiva competenza assumere informazioni e procedere a ispezioni di cose e di luoghi diversi dalla privata dimora, a rilievi segnaletici, descrittivi e fotografici e ad ogni altra operazione tecnica.

Possono altresì procedere al sequestro cautelare delle cose che possono formare oggetto di confisca amministrativa, nei modi e con i limiti con cui il codice di procedura penale consente il sequestro alla polizia giudiziaria.

E' sempre disposto il sequestro del veicolo a motore o del natante posto in circolazione senza essere coperto dalla assicurazione obbligatoria e del veicolo posto in circolazione senza che per lo stesso sia stato rilasciato il documento di circolazione.

All'accertamento delle violazioni punite con la sanzione amministrativa del pagamento di una somma di denaro possono procedere anche gli ufficiali e gli agenti di polizia giudiziaria, i quali, oltre che esercitare i poteri indicati nei precedenti commi, possono procedere, quando non sia possibile acquisire altrimenti gli elementi di prova, a perquisizioni in luoghi diversi dalla privata dimora, previa autorizzazione motivata del pretore del luogo ove le perquisizioni stesse dovranno essere effettuate. Si applicano le disposizioni del primo comma dell'Art. 333 e del primo e secondo comma dell'Art. 334 del codice di procedura penale.

E' fatto salvo l'esercizio degli specifici poteri di accertamento previsti dalle leggi vigenti.

Without prejudice to the exercise of the specific powers of assessment provided for by the laws in force.

Article 15⁴³⁹ Investigations by analysing samples

If analysis of samples is carried out to ascertain the violation, the laboratory manager must communicate the result of the analysis to the person concerned by registered letter with acknowledgment of receipt.

The interested party can request the review of the analysis with the participation of his own technical consultant. The request is presented with a written request to the body that took the samples to be analysed, within fifteen days from the communication of the result of the first analysis, which must be attached to the request itself.

The interested party is notified of the analysis review operations at least ten days before their start. The results of the review of the analysis are communicated to the person concerned by means of a registered letter with acknowledgment of receipt, by the manager of the laboratory that carried out the review of the analysis.

The communications referred to in the first and fourth paragraphs are equivalent to the dispute referred to in the first paragraph of Art. 14 and the deadline for reduced payment pursuant to Art. 16 starts from the communication of the outcome of the first analysis or, when the review of the analysis has been requested, from the communication of the outcome of the same.

If it is not possible to communicate to the interested party in the forms referred to in the first and fourth paragraphs, the provisions of Art. 14. With the decree or with the regional law indicated in the last paragraph of Art. 17, the amount of money that the applicant for the review of the analysis is required to pay will also be fixed and the institutes in charge of the same analysis may be indicated, also by modifying the current provisions of the law.

⁴³⁹ **Art. 15. Accertamenti mediante analisi di campioni (1)**

Se per l'accertamento della violazione sono compiute analisi di campioni, il dirigente del laboratorio deve comunicare all'interessato, a mezzo di lettera raccomandata con avviso di ricevimento, l'esito dell'analisi.

L'interessato può chiedere la revisione dell'analisi con la partecipazione di un proprio consulente tecnico. La richiesta è presentata con istanza scritta all'organo che ha prelevato i campioni da analizzare, nel termine di quindici giorni dalla comunicazione dell'esito della prima analisi, che deve essere allegato all'istanza medesima.

Delle operazioni di revisione dell'analisi è data comunicazione all'interessato almeno dieci giorni prima del loro inizio. I risultati della revisione dell'analisi sono comunicati all'interessato a mezzo di lettera raccomandata con avviso di ricevimento, a cura del dirigente del laboratorio che ha eseguito la revisione dell'analisi.

Le comunicazioni di cui al primo e al quarto comma equivalgono alla contestazione di cui al primo comma dell'Art. 14 ed il termine per il pagamento in misura ridotta di cui all'Art. 16 decorre dalla comunicazione dell'esito della prima analisi o, quando è stata chiesta la revisione dell'analisi, dalla comunicazione dell'esito della stessa.

Ove non sia possibile effettuare la comunicazione all'interessato nelle forme di cui al primo e al quarto comma, si applicano le disposizioni dell'Art. 14. Con il decreto o con la legge regionale indicati nell'ultimo comma dell'Art. 17 sarà altresì fissata la somma di denaro che il richiedente la revisione dell'analisi è tenuto a versare e potranno essere indicati, anche a modifica delle vigenti disposizioni di legge, gli istituti incaricati della stessa analisi.

For investigations in the area of other structural funds specific rules have been created in Law of 21 December 1999, n. 526 - Provisions for the fulfilment of obligations deriving from Italy's membership of the European Communities - Community law 1999: **65**

- The *Guardia di Finanza* has investigative powers attributed to the Finance Police for the purposes of assessing the VAT and the income tax, Art. 30 (Protection of community financial interests). This law enables the same powers to combat fraud against the "Community" as it does to protect the national financial interests.⁴⁴⁰
- Before the existence of this law, the *Guardia di Finanza* had no precise control mechanisms to prevent infringements of the law concerning structural funds (excepts for EAGFL, Guidance section). Art. 30 solved this problem by regulating that the Guardia di Finanza may carry out investigations in this field on the basis of its competence in the area of VAT and income tax.⁴⁴¹
- Main responsibilities of the *Guardia di Finanza*: suppression of smuggling, investigation of unlawful obtaining or misappropriation of EU law funds in the agricultural sector (EAGFL, Guarantee section), investigation of illegal acquisition or misappropriation of EU funds disbursed by the funds paid out by the structural funds.⁴⁴²

LAW 21 December 1999, n. 526 Provisions for the fulfilment of obligations deriving from Italy's membership of the European Communities⁴⁴³ **66**

Article 30⁴⁴⁴ **Protection of community financial interests**

1. In order to ensure, for the protection of financial interests Community, the same tools adopted for the protection of national financial interests, in accordance with article 280 of Treaty establishing the European Community, as replaced by the Treaty of Amsterdam referred to in the law of 16 June 1998, n. 209, soldiers of the Guardia di Finanza, for the assessment and the repression of violations to the detriment of the European Union and those detrimental to the national budget related to the former, proceed making

⁴⁴⁰ Weber 2003, pp. 149 et seq.

⁴⁴¹ Weber 2003, p. 150.

⁴⁴² Weber 2003, p. 154.

⁴⁴³ LEGGE 21 dicembre 1999, n. 526 – Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee – Legge comunitaria 1999.

⁴⁴⁴ **Art. 30. Tutela degli interessi finanziari comunitari.**

1. Al fine di assicurare, per la tutela degli interessi finanziari comunitari, gli stessi strumenti adottati per la tutela degli interessi finanziari nazionali, conformemente all'articolo 280 del Trattato che istituisce la Comunità europea, come sostituito dal Trattato di Amsterdam di cui alla legge 16 giugno 1998, n. 209, i militari della Guardia di finanza, per l'accertamento e la repressione delle violazioni in danno dell'Unione europea e di quelle lesive del bilancio nazionale connesse alle prime, procedono avvalendosi dei poteri d'indagine attribuiti alla Guardia di finanza ai fini dell'accertamento dell'imposta sul valore aggiunto e delle imposte sui redditi.

use of the investigative powers attributed to the Finance Police for the purposes of assessing the value added tax and the income tax.

(c) Investigative powers in the area of common market organisations

- 67** The **area of market organization** is very complex but the most important provisions can be reproduced below and beforehand summarized: The Competition Authority can open investigations if it considers the information it has, or information provided by public administrations, interested parties, or consumer associations, sufficient to verify possible violations of the prohibitions contained in Articles 2 and 3 of the law. Evidence can take many forms, including documents, oral statements, electronic messages, records, or any other medium where information is stored. The authority also has the power to set its own priorities for action in applying this law and Articles 101 and 102 of the Treaty on the Functioning of the European Union. It may decide not to follow up on reports that do not fall within those priorities. In any case, proceedings concerning possible infringements of competition law must respect the general principles of European Union law and the EU Charter of Fundamental Rights.
- 68** The authority may also, either on its own initiative or at the request of the Minister of Industry, Trade and Crafts or the Minister of State Holdings, **carry out general fact-finding missions** in economic sectors where trade developments, pricing behaviour, or other circumstances suggest that competition may be prevented, restricted, or distorted.

LAW No 287 of 10 October 1990 Rules for the protection of competition

Article 12⁴⁴⁵ Powers of investigation

1. The Authority, having evaluated the elements in its possession, however, e those brought to its knowledge by public administrations or by anyone who has an interest in

⁴⁴⁵ **Art. 12. Poteri di indagine.**

1. L'Autorita', valutati gli elementi comunque in suo possesso e quelli portati a sua conoscenza da pubbliche amministrazioni o da chiunque vi abbia interesse, ivi comprese le associazioni rappresentative dei consumatori, procede ad istruttoria per verificare l'esistenza di infrazioni ai divieti stabiliti negli articoli 2 e 3.

(1-bis. I tipi di prove ammissibili dinanzi all'Autorita' comprendono i documenti, le dichiarazioni orali, i messaggi elettronici, le registrazioni e tutti gli altri documenti contenenti informazioni, indipendentemente dalla loro forma e dal supporto sul quale le informazioni sono conservate.

1-ter. L'Autorita' ha il potere di definire le priorit  di intervento ai fini dell'applicazione della presente legge e degli articoli 101 e 102 del TFUE. L'Autorita' puo' non dare seguito alle segnalazioni che non rientrino tra le proprie priorit  di intervento.

1-quater. I procedimenti relativi alle infrazioni degli articoli 101 o 102 del TFUE ovvero degli articoli 2 o 3 della presente legge, incluso l'esercizio dei poteri di cui al presente capo II da parte dell'Autorita', rispettano i principi generali del diritto dell'Unione europea e la Carta dei diritti fondamentali dell'Unione europea.)

2. L'Autorita' puo', inoltre, procedere, d'ufficio o su richiesta del Ministro dell'industria, del commercio e dell'artigianato o del Ministro delle partecipazioni statali, ad indagini conoscitive di natura generale nei settori economici nei quali l'evoluzione degli scambi, il comportamento dei prezzi, o altre circostanze facciano presumere che la concorrenza sia impedita, ristretta o falsata.

it, including associations representative of consumers, proceeds to the investigation for verify the existence of infringements of the prohibitions established in articles 2 and 3. (1-bis. The types of evidence admissible before the they include documents, oral statements, messages electronic records, records and all other documents containing information, regardless of their form and support on the which information is stored.

1-ter. The Authority has the power to define the priorities of intervention for the purposes of applying this law and the Articles 101 and 102 of the TFEU. The Authority may not follow up on the reports that do not fall within its priorities of intervention.

1-quater. Proceedings relating to infringements of the articles 101 or 102 of the TFEU or articles 2 or 3 of this law, including the exercise of the powers referred to in this Chapter II by of the Authority, respect the general principles of law of the European Union and the Charter of Fundamental Rights of the Union European.)

2. The Authority can also proceed, ex officio or upon request of the Minister of Industry, Trade and Crafts or the Minister of State Holdings, to fact-finding surveys of general nature in the economic sectors in which the evolution of trade, pricing behaviour, or other circumstances do assume that competition is prevented, restricted or distorted.

Article 13⁴⁴⁶ Communication of understandings

1. Undertakings may communicate the agreements made to the Authority. If the Authority does not initiate the investigation referred to in Article 14 within one hundred and twenty days of the communication, it can no longer proceed with this investigation, except in the case of incomplete or untruthful communications.

Article 14 Preliminary Investigation

1. The Authority, in the event of an alleged infringement of articles 2 or 3, notifies the companies and entities concerned of the opening of the investigation.⁴⁴⁷ The owners or

⁴⁴⁶ **Art. 13. Comunicazione delle intese.**

1. Le imprese possono comunicare all'Autorità le intese intercorse. Se l'Autorità non avvia l'istruttoria di cui all'articolo 14 entro centoventi giorni dalla comunicazione non può più procedere a detta istruttoria, fatto salvo il caso di comunicazioni incomplete o non veritiere.

⁴⁴⁷ **Art. 14. Istruttoria.**

1. L'Autorità, nei casi di presunta infrazione agli articoli 2 o 3, notifica l'apertura dell'istruttoria alle imprese e agli enti interessati. I titolari o legali rappresentanti delle imprese ed enti hanno diritto di essere sentiti, personalmente o a mezzo di procuratore speciale, nel termine fissato contestualmente alla notifica ed hanno facoltà di presentare deduzioni e pareri in ogni stadio dell'istruttoria, nonché di essere nuovamente sentiti prima della chiusura di questa.

2. L'Autorità può in ogni momento dell'istruttoria richiedere alle imprese, enti o persone che ne siano in possesso, di fornire informazioni e di esibire documenti utili ai fini dell'istruttoria; disporre ispezioni al fine di controllare i

legal representatives of companies and entities have the right to be heard, personally or by means of a special attorney, within the deadline set at the same time as the notification and have the right to present deductions and opinions at each stage of the investigation, as well as to be heard again before the closing of this.

2. The Authority may at any time during the investigation request companies, bodies or persons who are in possession of it, to provide information and to exhibit documents useful for the purposes of the investigation; arrange inspections in order to check company documents and to make copies, also with the collaboration of other state bodies; arrange economic and statistical appraisals and analyses as well as the consultation of experts on any relevant element for the purposes of the investigation.

3. All news, information or data concerning the companies subject to investigation by the Authority are protected by official secrecy also with regard to public administrations.

4. The officials of the Authority in the exercise of their functions are public officials. They are bound by official secrecy.

5. With a provision of the Authority, the subjects required to provide the elements referred to in paragraph 2 are subject to a pecuniary administrative sanction of up to fifty million lire if they refuse or omit, without justifiable reason, to provide the information or to exhibit the documents or to a pecuniary administrative sanction of up to one hundred million lire if they provide information or exhibit untruthful documents. The various penalties provided for by the law in force are reserved.

documenti aziendali e di prenderne copia, anche avvalendosi della collaborazione di altri organi dello Stato; disporre perizie e analisi economiche e statistiche nonché la consultazione di esperti in ordine a qualsiasi elemento rilevante ai fini dell'istruttoria.

3. Tutte le notizie, le informazioni o i dati riguardanti le imprese oggetto di istruttoria da parte dell'Autorità sono tutelati dal segreto d'ufficio anche nei riguardi delle pubbliche amministrazioni.

4. I funzionari dell'Autorità nell'esercizio delle loro funzioni sono pubblici ufficiali. Essi sono vincolati dal segreto d'ufficio.

5. Con provvedimento dell'Autorità, i soggetti richiesti di fornire gli elementi di cui al comma 2 sono sottoposti alla sanzione amministrativa pecuniaria fino a cinquanta milioni di lire se rifiutano od omettono, senza giustificato motivo, di fornire le informazioni o di esibire i documenti ovvero alla sanzione amministrativa pecuniaria fino a cento milioni di lire se forniscono informazioni od esibiscono documenti non veritieri. Sono salve le diverse sanzioni previste dall'ordinamento vigente.

Article 15⁴⁴⁸ Warnings and penalties

1. If, following the investigation referred to in article 14, the Authority finds infringements of articles 2 or 3, it shall set the deadline for the elimination of the infringements to the companies and entities concerned. In cases of serious infringements, taking into account the gravity and duration of the infringement, it also provides for the application of a pecuniary administrative sanction up to ten percent of the turnover achieved in each company or body in the last financial year closed prior to the notification of the formal notice., determining the terms within which the company must proceed with the payment of the fine.

2. In the event of non-compliance with the warning referred to in paragraph 1, the Authority shall apply a pecuniary administrative sanction up to ten percent of the turnover or, in cases where the sanction referred to in paragraph 1 has been applied, of a minimum amount not less than double the sanction already applied with a maximum limit of ten percent of the turnover as identified in paragraph 1, also determining the term within which the payment of the sanction must be made. In cases of repeated non-compliance, the Authority may order the suspension of the business activity for up to thirty days.

⁴⁴⁸ Art. 15. Diffide e sanzioni.

1. Se a seguito dell'istruttoria di cui all'articolo 14 l'Autorità ravvisa infrazioni agli articoli 2 o 3, fissa alle imprese e agli enti interessati il termine per l'eliminazione delle infrazioni stesse. Nei casi di infrazioni gravi, tenuto conto della gravità e della durata dell'infrazione, dispone inoltre l'applicazione di una sanzione amministrativa pecuniaria fino al dieci per cento del fatturato realizzato in ciascuna impresa o ente nell'ultimo esercizio chiuso anteriormente alla notificazione della diffida, determinando i termini entro i quali l'impresa deve procedere al pagamento della sanzione.

2. In caso di inottemperanza alla diffida di cui al comma 1, l'Autorità applica la sanzione amministrativa pecuniaria fino al dieci per cento del fatturato ovvero, nei casi in cui sia stata applicata la sanzione di cui al comma 1, di importo minimo non inferiore al doppio della sanzione già applicata con un limite massimo del dieci per cento del fatturato come individuato al comma 1, determinando altresì il termine entro il quale il pagamento della sanzione deve essere effettuato. Nei casi di reiterata inottemperanza l'Autorità può disporre la sospensione dell'attività d'impresa fino a trenta giorni.

(d) Investigative powers in the area of direct expenditure

- 69 Direct expenditure is part of the direct management and therefore primarily controlled by the DGs of the Commission. In some cases investigators might still need the support of national authorities:

Article 83 Procurement Code Selection criteria and preliminary investigation

1. The selection criteria relate exclusively to:⁴⁴⁹

⁴⁴⁹ **Art. 83. Codice degli Appalti** Criteri di selezione e soccorso istruttorio

1. I criteri di selezione riguardano esclusivamente:

- a) i requisiti di idoneità professionale;
- b) la capacità economica e finanziaria;
- c) le capacità tecniche e professionali.

2. I requisiti e le capacità di cui al comma 1 sono attinenti e proporzionati all'oggetto dell'appalto, tenendo presente l'interesse pubblico ad avere il più ampio numero di potenziali partecipanti, nel rispetto dei principi di trasparenza e rotazione. Per i lavori, con il regolamento di cui all'articolo 216, comma 27-octies, sono disciplinati, nel rispetto dei principi di cui al presente articolo e anche al fine di favorire l'accesso da parte delle microimprese e delle piccole e medie imprese, il sistema di qualificazione, i casi e le modalità di avvalimento, i requisiti e le capacità che devono essere posseduti dal concorrente, anche in riferimento ai consorzi di cui all'articolo 45, lettere b) e c) e la documentazione richiesta ai fini della dimostrazione del loro possesso di cui all'allegato XVII. Fino all'adozione di detto regolamento, si applica l'articolo 216, comma 14.

3. Ai fini della sussistenza dei requisiti di cui al comma 1, lettera a), i concorrenti alle gare, se cittadini italiani o di altro Stato membro residenti in Italia, devono essere iscritti nel registro della camera di commercio, industria, artigianato e agricoltura o nel registro delle commissioni provinciali per l'artigianato, o presso i competenti ordini professionali. Al cittadino di altro Stato membro non residente in Italia, è richiesta la prova dell'iscrizione, secondo le modalità vigenti nello Stato di residenza, in uno dei registri professionali o commerciali di cui all'allegato XVI, mediante dichiarazione giurata o secondo le modalità vigenti nello Stato membro nel quale è stabilito ovvero mediante attestazione, sotto la propria responsabilità, che il certificato prodotto è stato rilasciato da uno dei registri professionali o commerciali istituiti nel Paese in cui è residente. Nelle procedure di aggiudicazione degli appalti pubblici di servizi, se i candidati o gli offerenti devono essere in possesso di una particolare autorizzazione ovvero appartenere a una particolare organizzazione per poter prestare nel proprio Paese d'origine i servizi in questione, la stazione appaltante può chiedere loro di provare il possesso di tale autorizzazione ovvero l'appartenenza all'organizzazione.

4. Per gli appalti di servizi e forniture, ai fini della verifica del possesso dei requisiti di cui al comma 1, lettera b), le stazioni appaltanti, nel bando di gara, possono richiedere:

- a) che gli operatori economici abbiano un fatturato minimo annuo, compreso un determinato fatturato minimo nel settore di attività oggetto dell'appalto;
- b) che gli operatori economici forniscano informazioni riguardo ai loro conti annuali che evidenzino in particolare i rapporti tra attività e passività;
- c) un livello adeguato di copertura assicurativa contro i rischi professionali.

5. Il fatturato minimo annuo richiesto ai sensi del comma 4, lettera a) non può comunque superare il doppio del valore stimato dell'appalto, calcolato in relazione al periodo di riferimento dello stesso, salvo in circostanze adeguatamente motivate relative ai rischi specifici connessi alla natura dei servizi e forniture, oggetto di affidamento. La stazione appaltante, ove richieda un fatturato minimo annuo, ne indica le ragioni nei documenti di gara. Per gli appalti divisi in lotti, il presente comma si applica per ogni singolo lotto. Tuttavia, le stazioni appaltanti possono fissare il fatturato minimo annuo che gli operatori economici devono avere con riferimento a gruppi di lotti nel caso in cui all'aggiudicatario siano aggiudicati più lotti da eseguirsi contemporaneamente. Se gli appalti basati su un accordo quadro devono essere aggiudicati in seguito alla riapertura della gara, il requisito del fatturato annuo massimo di cui al primo periodo del presente comma è calcolato sulla base del valore massimo atteso dei contratti specifici che saranno eseguiti contemporaneamente, se conosciuto, altrimenti sulla base del valore stimato dell'accordo quadro. Nel caso di sistemi dinamici di acquisizione, il requisito del fatturato annuo massimo è calcolato sulla base del valore massimo atteso degli appalti specifici da aggiudicare nell'ambito di tale sistema.

- a) professional suitability requirements;
- b) economic and financial capacity;

5-bis. In relazione al requisito di cui al comma 4, lettera c), l'adeguatezza della copertura assicurativa offerta viene valutata sulla base della polizza assicurativa contro i rischi professionali posseduta dall'operatore economico e in corso di validità. In relazione alle polizze assicurative di importo inferiore al valore dell'appalto, le stazioni appaltanti possono richiedere che l'offerta sia corredata, a pena di esclusione, dall'impegno da parte dell'impresa assicuratrice ad adeguare il valore della polizza assicurativa a quello dell'appalto, in caso di aggiudicazione. (2)

6. Per gli appalti di servizi e forniture, per i criteri di selezione di cui al comma 1, lettera c), le stazioni appaltanti possono richiedere requisiti per garantire che gli operatori economici possiedano le risorse umane e tecniche e l'esperienza necessarie per eseguire l'appalto con un adeguato standard di qualità. Nelle procedure, d'appalto per forniture che necessitano di lavori di posa in opera o di installazione, servizi o lavori, la capacità professionale degli operatori economici di fornire tali servizi o di eseguire l'installazione o i lavori è valutata con riferimento alla loro competenza, efficienza, esperienza e affidabilità. Le informazioni richieste non possono eccedere l'oggetto dell'appalto; l'amministrazione deve, comunque, tener conto dell'esigenza di protezione dei segreti tecnici e commerciali.

7. Fermo restando il sistema di qualificazione di cui all'articolo 84 nonché quanto previsto in materia di prova documentale preliminare dall'articolo 85, la dimostrazione dei requisiti di cui al comma 1, lettere b) e c) è fornita, a seconda della natura, della quantità o dell'importanza e dell'uso delle forniture o dei servizi, utilizzando i mezzi di prova di cui all'articolo 86, commi 4 e 5.

8. Le stazioni appaltanti indicano le condizioni di partecipazione richieste, che possono essere espresse come livelli minimi di capacità, congiuntamente agli idonei mezzi di prova, nel bando di gara o nell'invito a confermare interesse ed effettuano la verifica formale e sostanziale delle capacità realizzative, delle competenze tecniche e professionali, ivi comprese le risorse umane, organiche all'impresa, nonché delle attività effettivamente eseguite. Per i soggetti di cui all'articolo 45, comma 2, lettere d), e), f) e g), nel bando sono indicate le eventuali misure in cui gli stessi requisiti devono essere posseduti dai singoli concorrenti partecipanti. La mandataria in ogni caso deve possedere i requisiti ed eseguire le prestazioni in misura maggioritaria. I bandi e le lettere di invito non possono contenere ulteriori prescrizioni a pena di esclusione rispetto a quelle previste dal presente codice e da altre disposizioni di legge vigenti. Dette prescrizioni sono comunque nulle.

9. Le carenze di qualsiasi elemento formale della domanda possono essere sanate attraverso la procedura di soccorso istruttorio di cui al presente comma. In particolare, in caso di mancanza, incompletezza e di ogni altra irregolarità essenziale degli elementi e del documento di gara unico europeo di cui all'articolo 85, con esclusione di quelle afferenti all'offerta economica e all'offerta tecnica, la stazione appaltante assegna al concorrente un termine, non superiore a dieci giorni, perché siano rese, integrate o regolarizzate le dichiarazioni necessarie, indicandone il contenuto e i soggetti che le devono rendere. In caso di inutile decorso del termine di regolarizzazione, il concorrente è escluso dalla gara. Costituiscono irregolarità essenziali non sanabili le carenze della documentazione che non consentono l'individuazione del contenuto o del soggetto responsabile della stessa.

10. È istituito presso l'ANAC, che ne cura la gestione, il sistema del rating di impresa e delle relative premialità, per il quale l'Autorità rilascia apposita certificazione agli operatori economici, su richiesta. Il suddetto sistema è connesso a requisiti reputazionali valutati sulla base di indici qualitativi e quantitativi, oggettivi e misurabili, nonché sulla base di accertamenti definitivi che esprimono l'affidabilità dell'impresa. L'ANAC definisce i requisiti reputazionali e i criteri di valutazione degli stessi e i criteri relativi alla valutazione dell'impatto generato di cui all'articolo 1, comma 382, lettera b), della legge 28 dicembre 2015, n. 208, anche qualora l'offerente sia un soggetto diverso dalle società benefit, nonché le modalità di rilascio della relativa certificazione, mediante linee guida adottate entro tre mesi dalla data di entrata in vigore della presente disposizione. Le linee guida di cui al precedente periodo istituiscono altresì un sistema amministrativo, regolato sotto la direzione dell'ANAC, di penalità e premialità per la denuncia obbligatoria delle richieste estorsive e corruttive da parte delle imprese titolari di appalti pubblici, comprese le imprese subappaltatrici e le imprese fornitrici di materiali, opere e servizi, prevedendo altresì uno specifico regime sanzionatorio nei casi di omessa o tardiva denuncia. I requisiti reputazionali alla base del rating di impresa di cui al presente comma tengono conto, in particolare, dei precedenti comportamenti dell'impresa, con riferimento al mancato utilizzo del soccorso istruttorio, all'applicazione delle disposizioni sulla denuncia obbligatoria di richieste estorsive e corruttive, nonché al rispetto dei tempi e dei costi nell'esecuzione dei contratti e dell'incidenza e degli esiti del contenzioso sia in sede di partecipazione alle procedure di gara sia in fase di esecuzione del contratto. Per il calcolo del rating di impresa si tiene conto del comportamento degli operatori economici tenuto nelle procedure di affidamento avviate dopo l'entrata in vigore della presente disposizione. L'ANAC attribuisce elementi premiali agli operatori economici per comportamenti anteriori all'entrata in vigore della presente disposizione conformi a quanto previsto per il rilascio del rating di impresa.

c) technical and professional skills.

2. The requirements and capacities referred to in paragraph 1 are relevant and proportionate to the object of the contract, bearing in mind the public interest in having the largest number of potential participants, in compliance with the principles of transparency and rotation. For the works, with the regulation referred to in article 216, paragraph 27-octies, they are governed, in compliance with the principles referred to in this article and also in order to facilitate access by micro, small and medium-sized enterprises, the qualification system, the cases and methods of use, the requirements and skills that must be possessed by the tenderer, also with reference to the consortia referred to in Article 45, letters b) and c) and the documentation required for the purposes of proof of their possession as per Annex XVII.

3. In order to meet the requirements referred to in paragraph 1, letter a), competitors in the tenders, if Italian citizens or citizens of another Member State resident in Italy, must be registered in the register of the chamber of commerce, industry, crafts and agriculture or in the register of provincial commissions for crafts, or at the competent professional associations. Proof of registration, according to the procedures in force in the State of residence, in one of the professional or commercial registers referred to in Annex XVI, by means of a sworn declaration or according to the procedures in force, is required to the citizen of another Member State not resident in Italy. in the Member State in which he is established or by means of an attestation, under his own responsibility, that the certificate produced was issued by one of the professional or commercial registers established in the country in which he is resident. In the procedures for the award of public service contracts, if the candidates or tenderers must have a particular authorisation or belong to a particular organization in order to be able to provide the services in question in their country of origin, the contracting authority may ask them to prove possession of this authorisation or membership in the organization.

4. For service and supply contracts, for the purpose of verifying the possession of the requirements referred to in paragraph 1, letter b), the contracting authorities, in the call for tenders, may request:

a) that the economic operators have a minimum annual turnover, including a certain minimum turnover in the sector of activity which is the subject of the contract;

b) that economic operators provide information on their annual accounts highlighting in particular the relationships between assets and liabilities;

c) an adequate level of insurance coverage against occupational risks.

5. The minimum annual turnover required pursuant to paragraph 4, letter a) cannot in any case exceed double the estimated value of the contract, calculated in relation to the reference period of the same, except in adequately justified circumstances relating to the specific risks associated with nature of the services and supplies, object of the assignment. The contracting authority, where it requires a minimum annual turnover, indicates

the reasons for this in the tender documents. For contracts divided into lots, this paragraph applies to each single lot. However, the contracting authorities may set the minimum annual turnover that economic operators must have with reference to groups of lots in the event that the successful tenderer is awarded several lots to be carried out simultaneously. If contracts based on a framework agreement are to be awarded following the reopening of the tender, the requirement of maximum annual turnover referred to in the first sentence of this paragraph is calculated on the basis of the maximum expected value of the specific contracts that will be performed simultaneously, if known, otherwise based on the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum annual turnover requirement is calculated on the basis of the maximum expected value of the specific contracts to be awarded under that system, otherwise based on the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum annual turnover requirement is calculated on the basis of the maximum expected value of the specific contracts to be awarded under that system, otherwise based on the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum annual turnover requirement is calculated on the basis of the maximum expected value of the specific contracts to be awarded under that system, otherwise based on the estimated value of the framework agreement.

5-bis. In relation to the requirement referred to in paragraph 4, letter c), the adequacy of the insurance coverage offered is assessed on the basis of the insurance policy against professional risks owned by the economic operator and currently valid. In relation to insurance policies of an amount lower than the value of the contract, the contracting authorities may request that the offer be accompanied, under penalty of exclusion, by the undertaking by the insurance company to adjust the value of the insurance policy to that of the contract, in case of award. (2)

6. For service and supply contracts, for the selection criteria referred to in paragraph 1, letter c), the contracting authorities may request requirements to ensure that economic operators have the human and technical resources and experience necessary to perform the contract with an adequate quality standard. In procedures, procurement for supplies that require siting or installation works, services or works, the professional ability of economic operators to provide these services or to carry out the installation or works is assessed with reference to their competence, efficiency, experience and reliability. The information requested cannot exceed the subject of the contract; the administration must, however, take into account the need to protect technical and commercial secrets.

7. Without prejudice to the qualification system referred to in Article 84 as well as the provisions relating to preliminary documentary evidence in Article 85, the demonstration of the requirements referred to in paragraph 1, letters b) and c) is provided, depending on the nature, of the quantity or importance and use of the supplies or services, using the means of proof referred to in Article 86, paragraphs 4 and 5.

8. The contracting authorities indicate the required conditions of participation, which can be expressed as minimum levels of ability, together with the appropriate means of proof, in the call for tenders or in the invitation to confirm interest and carry out the formal and substantial verification of the realization capacities, technical and professional skills, including human resources, organic to the company, as well as the activities actually performed. For the subjects referred to in article 45, paragraph 2, letters d), e), f) and g), any measures in which the same requirements must be possessed by the individual participating competitors are indicated in the announcement. In any case, the agent must possess the requisites and perform the services in a majority way. Calls and letters of invitation may not contain further prescriptions under penalty of exclusion from those provided for by this code and by other provisions of the law in force. However, these prescriptions are void.

9. The shortcomings of any formal element of the application can be remedied through the preliminary aid procedure referred to in this paragraph. In particular, in the event of lack, incompleteness and any other essential irregularity of the elements and of the single European tender document referred to in Article 85, with the exclusion of those relating to the economic offer and the technical offer, the contracting authority assigns the competitor a term, not exceeding ten days, for the necessary declarations to be made, integrated or regularized, indicating their content and the persons who must make them. In case of useless expiry of the regularization period, the competitor is excluded from the race. The deficiencies in the documentation that do not allow the

10. The company rating system and related rewards are set up at ANAC, which manages its management, for which the Authority issues specific certification to economic operators, upon request. The aforementioned system is connected to reputational requirements assessed on the basis of qualitative and quantitative, objective and measurable indices, as well as on the basis of definitive assessments which express the reliability of the company. ANAC defines the reputational requirements and the evaluation criteria of the same and the criteria relating to the evaluation of the impact generated pursuant to article 1, paragraph 382, letter b), of the law of 28 December 2015, n. 208, even if the bidder is a person other than benefit companies, as well as the procedures for issuing the related certification, through guidelines adopted within three months from the date of entry into force of this provision. The guidelines referred to in the previous period also establish an administrative system, regulated under the direction of ANAC, of penalties and bonuses for the mandatory reporting of extortion and corruption requests by companies holding public tenders, including subcontractors and companies supplying materials, works and services, also providing for a specific sanctioning regime in cases of omitted or late reporting. The reputational requirements underlying the company rating referred to in this paragraph take into account, in particular, the previous conduct of the company, with reference to the failure to use the preliminary aid, to application of the provisions on the mandatory reporting of extortion and corruption requests, as well as

compliance with the times and costs in the execution of contracts and the incidence and outcomes of the dispute both in the participation in the tender procedures and in the execution of the contract. For the calculation of the business rating, the behaviour of economic operators in the credit procedures started after the entry into force of this provision is taken into account. ANAC attributes reward elements to economic operators for behaviours prior to the entry into force of this provision that comply with the provisions for issuing the company rating. incidence and outcomes of the dispute both in the participation in the tender procedures and in the execution of the contract. For the calculation of the business rating, the behaviour of economic operators in the credit procedures started after the entry into force of this provision is taken into account. ANAC attributes reward elements to economic operators for behaviours prior to the entry into force of this provision that comply with the provisions for issuing the company rating. entry into force of this provision. ANAC attributes reward elements to economic operators for behaviours prior to the entry into force of this provision that comply with the provisions for issuing the company rating. entry into force of this provision. ANAC attributes reward elements to economic operators for behaviours prior to the entry into force of this provision that comply with the provisions for issuing the company rating.

Article 111 Technical, accounting and administrative control

1. With the regulation referred to in article 216, paragraph 27-octies⁴⁵⁰, the methods and, if applicable, the type of acts through which the construction manager carries out the

⁴⁵⁰ **Art. 111. Codice degli Appalti 2022** Controllo tecnico, contabile e amministrativo

1. Con il regolamento di cui all'articolo 216, comma 27-octies, sono individuate le modalità e, se del caso, la tipologia di atti, attraverso i quali il direttore dei lavori effettua l'attività di cui all'articolo 101, comma 3, in maniera da garantirne trasparenza, semplificazione, efficientamento informatico, mediante metodologie e strumentazioni elettroniche anche per i controlli di contabilità. Con il regolamento di cui al primo periodo, sono disciplinate, altresì, le modalità di svolgimento della verifica di conformità in corso di esecuzione e finale, la relativa tempistica, nonché i casi in cui il direttore dell'esecuzione può essere incaricato della verifica di conformità. Qualora le amministrazioni aggiudicatrici non possano espletare l'attività di direzione dei lavori, essa è affidata, nell'ordine, ad altre amministrazioni pubbliche, previo apposito accordo ai sensi dell'articolo 15 della legge 7 agosto 1990, n. 241, o intesa o convenzione di cui all'articolo 30 del decreto legislativo 18 agosto 2000, n. 267; al progettista incaricato; ad altri soggetti scelti con le procedure previste dal presente codice per l'affidamento degli incarichi di progettazione.

1-bis. Gli accertamenti di laboratorio e le verifiche tecniche obbligatorie inerenti alle attività di cui al comma 1, ovvero specificamente previsti dal capitolato speciale d'appalto di lavori, sono disposti dalla direzione dei lavori

activity referred to in article 101 are identified, paragraph 3, in order to guarantee transparency, simplification, IT efficiency, through methodologies and electronic instruments also for accounting controls. The regulation referred to in the first period also governs the procedures for carrying out the ongoing and final conformity verification, the relative timing, as well as the cases in which the director of execution can be entrusted with the verification of conformity.. If the contracting authorities cannot carry out the work management activity, it is entrusted, in order, 15 of the law of 7 August 1990, n. 241, or agreement or agreement referred to in article 30 of Legislative Decree no. 267; to the designer in charge; to other subjects chosen with the procedures provided for in this code for the assignment of design assignments.

1-bis. The laboratory verifications and the mandatory technical verifications inherent to the activities referred to in paragraph 1, or specifically provided for by the special works contract specifications, are arranged by the works management or by the testing body, attributing the expense to the available sums set aside for this purpose in the economic framework. These expenses are not subject to a discount. The criteria for determining these costs are identified by decree of the Ministry of Infrastructure and Transport, adopted on the proposal of the Higher Council for Public Works.

2. The director of the execution of the service or supply contract is, as a rule, the sole person in charge of the procedure and, also with the help of one or more operational managers identified by the contracting authority in relation to the complexity of the contract, the coordination, management and technical-accounting control of the execution of the contract stipulated by the contracting authority, ensuring the regular execution by the executor, in compliance with the contractual documents. With the same regulation referred to in paragraph 1, the methods for carrying out the control activity referred to in the previous period are also fully identified, according to criteria of transparency and simplification, using electronic methodologies and instruments. Up to the date of entry into force of the regulation referred to in article 216, paragraph 27-octies, the transitional provision envisaged therein shall apply.

o dall'organo di collaudo, imputando la spesa a carico delle somme a disposizione accantonate a tale titolo nel quadro economico. Tali spese non sono soggette a ribasso. Con decreto del Ministero delle infrastrutture e dei trasporti, adottato su proposta del Consiglio superiore dei lavori pubblici, sono individuati i criteri per la determinazione di tali costi.

2. Il direttore dell'esecuzione del contratto di servizi o di forniture è, di norma, il responsabile unico del procedimento e provvede, anche con l'ausilio di uno o più direttori operativi individuati dalla stazione appaltante in relazione alla complessità dell'appalto, al coordinamento, alla direzione e al controllo tecnico-contabile dell'esecuzione del contratto stipulato dalla stazione appaltante assicurando la regolare esecuzione da parte dell'esecutore, in conformità ai documenti contrattuali. Con il medesimo regolamento di cui al comma 1 sono altresì individuate compiutamente le modalità di effettuazione dell'attività di controllo di cui al periodo precedente, secondo criteri di trasparenza e semplificazione, mediante metodologie e strumentazioni elettroniche. Fino alla data di entrata in vigore del regolamento di cui all'articolo 216, comma 27-octies, si applica la disposizione transitoria ivi prevista.

2-bis. Le metodologie e strumentazioni elettroniche di cui ai commi 1 e 2 del presente articolo garantiscono il collegamento con la Banca dati nazionale dei contratti pubblici di cui all'articolo 213, comma 8, per l'invio delle informazioni richieste dall'ANAC ai sensi del citato articolo 213, comma 9.

2-bis. The methodologies and electronic instruments referred to in paragraphs 1 and 2 of this article guarantee the connection with the national database of public contracts referred to in article 213, paragraph 8, for sending the information requested by the ANAC pursuant to the aforementioned article 213, paragraph 9.

(3) Protection of information

(a) Banking Secrecy

Once it was undoubted that the banking secrecy is a fundamental principle to privacy but as time passed states recognized that absolute privacy is an obstacle to effective administrative and criminal investigations and does hinder the states to combat offences and crimes.⁴⁵¹ 70

Some argue with the Italian Constitutional Court that Italy does not provide for a banking secrecy⁴⁵² (anymore) but the debate considers the following Articles as a foundation for a banking secrecy. 71

⁴⁵¹ Ranieri 1986, pp. 146 et seq. to the situation in Italy in former times (ex-ante 1990).

⁴⁵² Constitutional Court, Decision No. 51, 18 February 1992 (*Sentenza n. 51 del 1992*), see <https://www.giurcost.org/decisioni/1992/0051s-92.html>. Accessed 31 December 2025:

“3.- The question of constitutionality raised by the referring court is unfounded.

The term banking secrecy denotes a duty of confidentiality which banking undertakings traditionally have with regard to transactions, accounts and positions in relation to the users of the services they offer. However, this duty does not correspond to the individual bank customer having a constitutionally protected subjective legal position and certainly not to a personal right, since it is the area of banking secrecy to which accounts and transactions of users of banking services traditionally belong that is directly relevant to the objective of security and good performance of commercial transactions. For this reason, the whether, how and how not of banking secrecy is left to the discretion of the ordinary legislature, which in making this assessment is required to a not unreasonable appreciation of the purposes of utility and social justice of these articles Art. 41 (2) and 42 (2) of the Constitution regulate economic activity and the regulation of membership of the hereditary estate. At the level of constitutional principles, however, it remains to be stated that the legislature’s discretionary decisions, insofar as they are oriented in favour of the protection of banking secrecy, cannot go so far as to allow the latter to stand in the way of the fulfilment of mandatory duties of solidarity, first of all the contribution to public expenditure on the basis of one’s own ability to pay (Article 53 of the Basic Law) or to the point of deriving even the slightest obstacle to the implementation of primary constitutional requirements,

It is within this framework of constitutional principles that the right of substitution, which is used as an intermediate standard in the assessment of the constitutionality of the challenged provisions, is to be placed. Rather, the delegated legislature is required to implement the delegation law by interpreting its regulatory content in accordance with constitutional principles. Thus the formulation of the directives under Art. 10, no. 12 of Act No. 825 of 1971 within the constitutional reference provisions is precisely necessary in order to assess the constitutionality of the provisions enacted by the delegated legislature in implementation of these directives. [...]

In fact, if the enabling provision is to be interpreted in harmony with the Constitution and, more specifically, with the principle that the duty of confidentiality connected with banking secrecy **cannot cover tax offences and cannot be an obstacle to the investigation of those offences**, Article 10(12) cannot be seen as being intended to recognise the principle of ‘banking secrecy’, in the face of which the interventions of the public authorities aimed at investigating tax offences are configured as ‘exceptional derogations’. 12, cannot be seen as recognising the principle of ‘banking secrecy’, in the face of which the interventions of the public authorities aimed at the investigation of tax offences are configured as ‘exceptional exceptions’ and even ‘suspicious’, so much so as to require determinations which are exhaustive and limited to cases of greater gravity.

- Article 7 of the Consolidated Banking Law
- Article 44 and 47 Italian Constitution
- Article 25 c.p.p. declares judicial decisions as binding upon all authorities.

(b) Tax secrecy (General Tax Code)

72 In the area of VAT inspections:

Article 66 Official secret.⁴⁵³ **Decree of the President of the Republic dated 10/26/1972 n. 633 - In force since 08/11/2005 Modified by: Legislative Decree of 19/09/2005 n. 215 Article 1**

The employees of the *financial administration and the officers and agents of the financial police are bound to secrecy for everything concerning the data and news of which they become aware in the fulfilment of the tasks* and in the exercise of the powers provided for by this decree. The communication by the Financial Administration to the competent authorities of the Member States of the European Economic Community of the information necessary to allow the correct assessment of VAT, in implementation of Directive 2003/93 /, is not considered a violation of official secrecy. EC and Regulation (EC) no. 1798/2003.

(c) State and Administrative secrecy (Administrative laws)

73 - Law 3 August 2007, n. 124/ *Legge 3 agosto 2007, n. 124*⁴⁵⁴

In other words, the guarantee paradigm of personal freedom rights cannot be applied to the confidentiality to which the banks are bound in respect of their customers' transactions, *since banking secrecy is not based on human values to be protected: there are, more simply, economic institutions and patrimonial interests*, to which, according to the constant case law of this Court, that paradigm is not applicable (see judgments nos. 55 of 1968 and 22 of 1971).

This means that the same proxy provision *cannot be interpreted as a restrictive rule of the tax administration's powers of investigation in the face of banking secrecy*, all the more so since, when Article 10(12) refers to the "particularly serious hypotheses" that would legitimise the financial offices' access to the confidential data held by the banks, it cannot but include in those hypotheses all possible cases of tax offence for evasion.

In the light of the constitutional principles, in fact, tax evasion constitutes, in any case, a "particularly serious hypothesis", for the simple fact that it represents, in each of its manifestations, the breaking of the bond of minimal loyalty that binds citizens together and entails, therefore, the violation of one of the "mandatory duties of solidarity", on which, pursuant to Article 2 of the Constitution, a civil coexistence ordered to the values of individual freedom and social justice is founded.

[...]."

⁴⁵³ **Articolo 66 Segreto d'ufficio. Decreto del Presidente della Repubblica del 26/10/1972 n. 633 -**

In vigore dal 08/11/2005

Modificato da: Decreto legislativo del 19/09/2005 n. 215 Articolo 1 Gli impiegati dell'Amministrazione finanziaria e gli ufficiali e agenti della guardia di finanza sono obbligati al segreto per tutto ciò che riguarda i dati e le notizie di cui vengono a conoscenza nell'adempimento dei compiti e nell'esercizio dei poteri previsti dal presente decreto. Non è considerata violazione del segreto d'ufficio la comunicazione da parte dell'Amministrazione finanziaria alle competenti autorità degli Stati membri della Comunità economica europea delle informazioni atte a permettere il corretto accertamento dell'I.V.A., in attuazione della direttiva 2003/93/CE e del regolamento (CE) n. 1798/2003.

⁴⁵⁴ Caporale 2018.

(d) Data secrecy (Data protection laws, Customs Code, General Tax Code)**Code of Administrative Process⁴⁵⁵****Article 136 Provisions on communications and IT deposits [...]**

2. The lawyers, the parties in cases in which they are personally in court and the adjutants of the judge deposit all the deeds and documents electronically. In exceptional cases, also in consideration of the recurrence of particular reasons of confidentiality linked to the position of the parties or the nature of the dispute, the president of the court or the Council of State, the president of the section if the appeal is already pending or the college if the question arises at the hearing may dispense, subject to a motivated provision, from the use of the subscription and deposit methods referred to in paragraph 2-bis and in the first sentence of this paragraph; in such cases and in other cases of exclusion from the use of telematic methods provided for by the decree referred to in Article 13, paragraph 1, of the implementing rules, the deeds and documents are filed and stored.

Protection of persons and other subjects with regard to the processing of personal data LAW No. 675 of 31 December 1996⁴⁵⁶**Article 7 Notification**

1. The owner who intends to process personal data subject to the scope of this law is required to notify the Guarantor if the processing, by reason of the relative methods or the nature of the personal data, is likely to prejudice the rights and freedoms of the interested party, and only in the cases and with the methods identified with the regulation referred to in Article 33, paragraph 3.⁴⁵⁷

⁴⁵⁵ **Art. 136. Codice del processo amministrativo** Disposizioni sulle comunicazioni e sui depositi informatici [...]

2. I difensori, le parti nei casi in cui stiano in giudizio personalmente e gli ausiliari del giudice depositano tutti gli atti e i documenti con modalità telematiche. In casi eccezionali, anche in considerazione della ricorrenza di particolari ragioni di riservatezza legate alla posizione delle parti o alla natura della controversia il presidente del tribunale o del Consiglio di Stato, il presidente della sezione se il ricorso è già incardinato o il collegio se la questione sorge in udienza possono dispensare, previo provvedimento motivato, dall'impiego delle modalità di sottoscrizione e di deposito di cui al comma 2-bis ed al primo periodo del presente comma; in tali casi e negli altri casi di esclusione dell'impiego di modalità telematiche previsti dal decreto di cui all'articolo 13, comma 1, delle norme di attuazione, si procede al deposito ed alla conservazione degli atti e dei documenti.

⁴⁵⁶ Tutela delle persone e di altri soggetti rispetto al trattamento dei dati personali LEGGE 31 dicembre 1996 N. 675

⁴⁵⁷ **Capo II**

OBBLIGHI PER IL TITOLARE DEL TRATTAMENTO

Art. 7 Legge 675/96 Notificazione

1. Il titolare che intenda procedere ad un trattamento di dati personali soggetto al campo di applicazione della presente legge è tenuto a darne notificazione al Garante se il trattamento, in ragione delle relative modalità o della natura dei dati personali, sia suscettibile di recare pregiudizio ai diritti e alle libertà dell'interessato, e nei soli casi e con le modalità individuati con il regolamento di cui all'articolo 33, comma 3(*).

[continuing footnote 456] 2. La notificazione è effettuata preventivamente ed una sola volta, a mezzo di lettera raccomandata ovvero con altro mezzo idoneo a certificarne la ricezione, prescindendo dal numero delle operazioni da svolgere, nonché dalla durata del trattamento e può riguardare uno o più trattamenti con finalità correlate. Una nuova notificazione è richiesta solo se muta taluno degli elementi che devono essere indicati (*) e deve precedere l'effettuazione della variazione.

Le disposizioni di cui ai successivi commi 3, 4, 5, 5-bis, 5-ter, 5-quater e 5-quinquies, sono abrogate a decorrere dalla data di entrata in vigore delle modifiche apportate al regolamento di cui all'articolo 33, comma 3, in applicazione del comma 1 del presente articolo.

3. La notificazione è sottoscritta dal notificante e dal responsabile del trattamento.

4. La notificazione contiene:

- a) il nome, la denominazione o la ragione sociale e il domicilio, la residenza o la sede del titolare;
- b) le finalità e modalità del trattamento;
- c) la natura dei dati, il luogo ove sono custoditi e le categorie di interessati cui i dati si riferiscono;
- d) l'ambito di comunicazione e di diffusione dei dati;
- e) i trasferimenti di dati previsti verso Paesi non appartenenti all'Unione europea o, qualora, riguardino taluno dei dati di cui agli articoli 22 e 24, fuori del territorio nazionale;
- f) una descrizione generale che permetta di valutare l'adeguatezza delle misure tecniche ed organizzative adottate per la sicurezza dei dati;
- g) l'indicazione della banca di dati o delle banche di dati cui si riferisce il trattamento, nonché l'eventuale connessione con altri trattamenti o banche di dati, anche fuori del territorio nazionale;
- h) il nome, la denominazione o la ragione sociale e il domicilio, la residenza o la sede del rappresentante del titolare nel territorio dello Stato e di almeno un responsabile, da indicare nel soggetto eventualmente designato ai fini di cui all'articolo 13 (**); in mancanza di tale indicazione si considera responsabile il notificante;
- i) la qualità e la legittimazione del notificante.

5. I soggetti tenuti ad iscriversi o che devono essere annotati nel registro delle imprese di cui all'articolo 2188 del codice civile, nonché coloro che devono fornire le informazioni di cui all'articolo 8, comma 8, lettera d), della legge 29 dicembre 1993, n. 580, alle camere di commercio, industria, artigianato e agricoltura, possono effettuare la notificazione per il tramite di queste ultime, secondo le modalità stabilite con il regolamento di cui all'articolo 33, comma 3. I piccoli imprenditori gli artigiani possono effettuare la notificazione anche per il tramite delle rispettive rappresentanze di categoria; gli iscritti agli albi professionali anche per il tramite dei rispettivi ordini professionali. Resta in ogni caso ferma la disposizione di cui al comma 3.

5-bis. La notificazione in forma semplificata può non contenere taluno degli elementi di cui al comma 4, lettere b), c), e) e g), individuati dal Garante ai sensi del regolamento di cui all'articolo 33, comma 3, quando il trattamento è effettuato:

- a) da soggetti pubblici, esclusi gli enti pubblici economici, sulla base di espressa disposizione di legge ai sensi degli articoli 22, comma 3 e 24, ovvero del provvedimento di cui al medesimo articolo 24;
- b) nell'esercizio della professione di giornalista e per l'esclusivo perseguimento delle relative finalità, ovvero dai soggetti indicati nel comma 4-bis dell'articolo 25, nel rispetto del codice di deontologia di cui al medesimo articolo;
- c) temporaneamente senza l'ausilio di mezzi elettronici o comunque automatizzati, ai soli fini e con le modalità strettamente collegate all'organizzazione interna dell'attività esercitata dal titolare, relativamente a dati non registrati in una banca di dati e diversi da quelli di cui agli articoli 22 e 24.

c-bis) per scopi storici, di ricerca scientifica e di statistica in conformità alle leggi, ai regolamenti, alla normativa comunitaria e ai codici di deontologia e di buona condotta sottoscritti ai sensi dell'articolo 31.

5-ter. Fuori dei casi di cui all'articolo 4, il trattamento non è soggetto a notificazione quando:

- a) è necessario per l'assolvimento di un compito previsto dalla legge, da un regolamento o dalla normativa comunitaria, relativamente a dati diversi da quelli indicati negli articoli 22 e 24;
- b) riguarda dati contenuti o provenienti da pubblici registri, elenchi, atti o documenti conoscibili da chiunque, fermi restando i limiti e le modalità di cui all'articolo 20, comma 1, lettera b);
- c) è effettuato per esclusive finalità di gestione del protocollo, relativamente ai dati necessari per la classificazione della corrispondenza inviata per fini diversi da quelli di cui all'articolo 13, comma 1, lettera e), con particolare riferimento alle generalità e ai recapiti degli interessati, alla loro qualifica e all'organizzazione di appartenenza;
- d) riguarda rubriche telefoniche o analoghe non destinate alla diffusione, utilizzate unicamente per ragioni d'ufficio e di lavoro e comunque per fini diversi da quelli di cui all'articolo 13, comma 1, lettera e);

2. The notification is made in advance and once, by registered letter or by other means suitable for certifying its receipt, regardless of the number of operations to be carried out, as well as the duration of the treatment and may concern one or more treatments with related purposes. A new notification is required only after certain elements that must be indicated (*) and must precede the execution of the variation.

The provisions referred to in the following paragraphs 3, 4, 5, 5-bis, 5-ter, 5-quater and 5-quinquies, are repealed from the date of entry into force of the amendments made to the regulation referred to in article 33, paragraph 3, in application of paragraph 1 of this article.

3. The notification is signed by the notifier and the controller.

4. The notification contains:

- a) the name, denomination or company name and the domicile, residence or registered office of the holder;
- b) the purposes and methods of the processing;

e) è finalizzato unicamente all'adempimento di specifici obblighi contabili, retributivi, previdenziali, assistenziali fiscali, ed è effettuato con riferimento alle sole categorie di dati, di interessati e di destinatari della comunicazione ed diffusione strettamente collegate a tale adempimento, conservando i dati non oltre il periodo necessario all'adempimento medesimo;

f) è effettuato, salvo quanto previsto dal comma 5-bis, lettera b) da liberi professionisti iscritti in albi o elenchi professionali, per le sole finalità strettamente collegate all'adempimento di specifiche prestazioni e fermo restando il segreto professionale;

g) è effettuato dai piccoli imprenditori di cui all'articolo 2083 del Codice civile per le sole finalità strettamente collegate allo svolgimento dell'attività professionale esercitata, e limitatamente alle categorie di dati di interessati, di destinatari della comunicazione e diffusione e al periodo di conservazione dei dati necessari per il perseguimento delle finalità medesime;

h) è finalizzato alla tenuta di albi o elenchi professionali in conformità alle leggi e ai regolamenti;

i) è effettuato per esclusive finalità dell'ordinaria gestione di biblioteche, musei e mostre, in conformità alle leggi e ai regolamenti, ovvero per la organizzazione di iniziative culturali o sportive o per la formazione di cataloghi e bibliografie;

l) è effettuato da associazioni, fondazioni, comitati anche a carattere politico, filosofico, religioso o sindacale, ovvero da loro organismi rappresentativi, istituiti per scopi non di lucro e per il perseguimento di finalità lecite, relativamente a dati inerenti agli associati e ai soggetti che in relazione a tali finalità hanno contatti regolari con l'associazione, la fondazione, il comitato o l'organismo, fermi restando gli obblighi di informativa degli interessati e di acquisizione del consenso, ove necessario;

m) è effettuato dalle organizzazioni di volontariato di cui alla legge 11 agosto 1991, n. 266, nei limiti di cui alla lettera l) e nel rispetto delle autorizzazioni e delle prescrizioni di legge di cui agli articoli 22 e 23;

n) è effettuato temporaneamente ed è finalizzato esclusivamente alla pubblicazione o diffusione occasionale di articoli, saggi e altre manifestazioni del pensiero, nel rispetto del Codice di cui all'articolo 25;

o) è effettuato, anche con mezzi elettronici o comunque automatizzati, per la redazione di periodici o pubblicazioni aventi finalità di informazione giuridica, relativamente a dati desunti da provvedimenti dell'autorità giudiziaria o da altre autorità;

p) è effettuato temporaneamente per esclusive finalità di raccolta di adesioni a proposte di legge d'iniziativa popolare, a richieste di referendum, a petizioni o ad appelli;

q) è finalizzato unicamente all'amministrazione dei condomini di cui all'articolo 1117 e seguenti del Codice civile, limitatamente alle categorie di dati, di interessati e di destinatari della comunicazione necessarie per l'amministrazione dei beni comuni, conservando i dati non oltre il periodo necessario per la tutela dei corrispondenti diritti.

q-bis) è compreso nel programma statistico nazionale o in atti di programmazione statistica previsti dalla legge ed è effettuato in conformità alle leggi, ai regolamenti, alla normativa comunitaria e ai codici di deontologia e di buona condotta sottoscritti ai sensi dell'articolo 31.

[...]

- c) the nature of the data, the place where they are kept and the categories of interested parties to which the data refer;
- d) the scope of communication and dissemination of the data;
- e) planned data transfers to countries outside the European Union or, if they concern any of the data referred to in articles 22 and 24, outside the national territory;
- f) a general description that allows to evaluate the adequacy of the technical and organizational measures adopted for data security;
- g) the indication of the data bank or databases to which the treatment refers, as well as any connection with other treatments or databases, even outside the national territory;
- h) the name, denomination or company name and the domicile, residence or registered office of the owner's representative in the territory of the State and of at least one person in charge, to be indicated in the person designated for the purposes referred to in Article 13 (* *); in the absence of such indication, the notifier is considered responsible;
- i) the quality and legitimacy of the notifier.

5. The subjects required to register or who must be noted in the register of companies referred to in article 2188 of the civil code, as well as those who must provide the information referred to in article 8, paragraph 8, letter d), of the law of 29 December 1993, n. 580, to the chambers of commerce, industry, crafts and agriculture, can notify through the latter, according to the procedures established by the regulation referred to in article 33, paragraph 3. Small businesses and artisans can also notify through of the respective category representatives; those enrolled in the professional registers also through their respective professional orders. In any case, the provision of paragraph 3 remains valid.

5-bis. The notification in simplified form may not contain any of the elements referred to in paragraph 4, letters b), c), e) and g), identified by the Guarantor pursuant to the regulations referred to in article 33, paragraph 3, when the processing is carried out:

- a) by public entities, excluding public economic entities, on the basis of an express provision of the law pursuant to articles 22, paragraphs 3 and 24, or the provision referred to in the same article 24;
- b) in the exercise of the profession of journalist and for the exclusive pursuit of the related purposes, or by the subjects indicated in paragraph 4-bis of article 25, in compliance with the code of ethics referred to in the same article;
- c) temporarily without the aid of electronic or automated means, for the sole purposes and with the methods strictly connected to the internal organization of the activity carried out by the owner, in relation to data not registered in a database and other than those referred to in articles 22 and 24.

c-bis) for historical, scientific research and statistical purposes in compliance with laws, regulations, community legislation and codes of ethics and good conduct signed pursuant to article 31.

5-ter. Outside the cases referred to in Article 4, the processing is not subject to notification when:

- a) it is necessary for the performance of a task provided for by law, by a regulation or by community legislation, in relation to data other than those indicated in articles 22 and 24;
- b) concerns data contained or coming from public registers, lists, deeds or documents that can be known by anyone, without prejudice to the limits and procedures set out in article 20, paragraph 1, letter b);
- c) is carried out for the exclusive purposes of managing the protocol, in relation to the data necessary for the classification of correspondence sent for purposes other than those referred to in article 13, paragraph 1, letter e), with particular reference to the general information and contact details of the interested parties, their qualification and to the organization they belong to;
- d) concerns telephone or similar directories not intended for broadcasting, used solely for office and work reasons and in any case for purposes other than those referred to in Article 13, paragraph 1, letter e);
- e) is aimed solely at the fulfilment of specific accounting, remuneration, social security, welfare and tax obligations, and is carried out with reference only to the categories of data, of interested parties and recipients of the communication and dissemination strictly connected to this fulfilment, keeping the data no longer than the necessary period the fulfilment itself;
- f) is carried out, except as provided for in paragraph 5- bis, letter b) by freelancers registered in professional registers or lists, for the sole purposes strictly connected to the fulfilment of specific services and without prejudice to professional secrecy;
- g) it is carried out by small entrepreneurs referred to in Article 2083 of the Civil Code for the sole purposes strictly connected to the performance of the professional activity exercised, and limited to the categories of data of interested parties, recipients of communication and dissemination and the retention period of the data necessary for the pursuit of the same purposes;
- h) is aimed at keeping professional registers or lists in compliance with laws and regulations;
- the) is carried out for the exclusive purposes of the ordinary management of libraries, museums and exhibitions, in compliance with laws and regulations, or for the organization of cultural or sporting initiatives or for the formation of catalogues and bibliographies;
- l) is carried out by associations, foundations, committees also of a political, philosophical, religious or trade union nature, or by their representative bodies, established for non-wrapping purposes and for the pursuit of lawful purposes, relating to data inherent to the members and subjects who in relation to them purposes have regular contact with the association, foundation, committee or body, without prejudice to the information obligations of the interested parties and the acquisition of consent, where necessary;

- m) is carried out by the voluntary organizations of which the law 11 August 1991, n. 266, within the limits referred to in letter l) and in compliance with the authorisations and provisions of the law referred to in articles 22 and 23;
- n) is carried out temporarily and is aimed exclusively at the publication or occasional dissemination of articles, essays and other manifestations of thought, in compliance with the Code referred to in Article 25;
- o) is carried out, also by electronic or automated means, for the preparation of periodicals or publications for legal information purposes, in relation to data deriving from judicial or other authority provisions;
- p) is carried out temporarily for the exclusive purpose of collecting adhesions to bills of popular initiative, requests for referendums, petitions or appeals;
- q) is aimed solely at the administration of condominiums referred to in Article 1117 and following of the Civil Code, limited to the categories of data, of interested parties and recipients of the communication necessary for the administration of common goods, keeping the data no later than the period necessary for the protection of the corresponding rights.
- q-bis) is included in the national statistical program or in statistical planning acts provided for by law and is carried out in compliance with the laws, regulations, community legislation and codes of ethics and good conduct signed pursuant to article 31. [...]

Article 18⁴⁵⁸ Damage caused as a result of the processing of personal data

1. Anyone who causes damage to others as a result of the processing of personal data is required to pay compensation pursuant to article 2050 of the civil code.

⁴⁵⁸ **Art. 18. Danni cagionati per effetto del trattamento di dati personali.**

1. Chiunque cagiona danno ad altri per effetto del trattamento di dati personali è tenuto al risarcimento ai sensi dell'articolo 2050 del codice civile.

Chapter V Treatments Subject To Special Regime

Article 27⁴⁵⁹ Treatment by public subjects

1. Except as provided in paragraph 2, the processing of personal data by public entities, excluding public economic entities, is allowed only for the performance of institutional functions, within the limits established by law and regulations.
2. The communication and dissemination to public entities, excluding public economic entities, of the processed data are allowed when required by law or regulation, or in any case necessary for the performance of institutional functions. referred to in Article 7, paragraphs 2 and 3 to the Guarantor who prohibits, with a motivated provision, the communication or dissemination if the provisions of this law are violated.
3. The communication and dissemination of personal data by public entities to private individuals or public economic entities are permitted only if provided for by law or regulation.
4. The criteria for the organization of public administrations referred to in article 5 of the Legislative Decree 3 February 1993, n. 29, are implemented in full compliance with the provisions of this law.

Article 35⁴⁶⁰ Unlawful processing of personal data

1. Unless the fact constitutes a more serious crime, anyone who, in order to derive a profit for themselves or others or to cause damage to others, proceeds to the processing of personal data in violation of the provisions of articles 11, 20 and 27, is punished with

⁴⁵⁹ Capo V

TRATTAMENTI SOGGETTI A REGIME SPECIALE

Art. 27. Trattamenti da parte di soggetti pubblici.

1. Salvo quanto previsto al comma 2, il trattamento di dati personali da parte di soggetti pubblici, esclusi gli enti pubblici economici, è consentito soltanto per lo svolgimento delle funzioni istituzionali, nei limiti stabiliti dalla legge dai regolamenti.
2. La comunicazione e la diffusione a soggetti pubblici, esclusi gli enti pubblici economici, dei dati trattati sono ammesse quando siano previste da norme di legge o di regolamento, o risultino comunque necessarie per lo svolgimento delle funzioni istituzionali. In tale ultimo caso deve esserne data previa comunicazione nei modi di cui all'articolo 7, commi 2 e 3 al Garante che vieta, con provvedimento motivato, la comunicazione o la diffusione se risultano violate le disposizioni della presente legge.
3. La comunicazione e la diffusione dei dati personali da parte di soggetti pubblici a privati o a enti pubblici economici sono ammesse solo se previste da norme di legge o di regolamento.
4. I criteri di organizzazione delle amministrazioni pubbliche di cui all'articolo 5 del decreto legislativo 3 febbraio 1993, n. 29, sono attuati nel pieno rispetto delle disposizioni della presente legge.

⁴⁶⁰ Art. 35. Trattamento illecito di dati personali.

1. Salvo che il fatto costituisca più grave reato, chiunque, al fine di trarne per sé o per altri profitto o di recare ad altri un danno, procede al trattamento di dati personali in violazione di quanto disposto dagli articoli 11, 20 e 27, è punito con la reclusione sino a due anni, se il fatto consiste nella comunicazione o diffusione, con la reclusione da tre mesi a due anni.
2. Salvo che il fatto costituisca più grave reato, chiunque, al fine di trarne per sé o per altri profitto o di recare ad altri un danno, procede al trattamento di (*) dati personali in violazione di quanto disposto dagli articoli 21, 22, 23, 24 e 24-bis (*), ovvero del divieto di cui all'articolo 28, comma 3, è punito con la reclusione da tre mesi a due anni.
3. Se dai fatti di cui ai commi 1 e 2 deriva documento, la reclusione è da uno a tre anni.

imprisonment until to two years, if the fact consists of communication or dissemination, with imprisonment from three months to two years.

2. Unless the fact constitutes a more serious crime, whoever, in order to derive profit for themselves or for others or to harm others, proceeds to the processing of (*) personal data in violation of the provisions of articles 21, 22, 23, 24 and 24-bis (*), or the prohibition referred to in article 28, paragraph 3, is punishable by imprisonment from three months to two years.

3. If harm results from the facts referred to in paragraphs 1 and 2, the imprisonment is from one to three years.

Article 36⁴⁶¹ Failure to adopt measures necessary for data security

1. Whoever, being required to do so, fails to take the necessary measures to guarantee the security of personal data, in violation of the provisions of the regulations referred to in paragraphs 2 and 3 of article 15, is punished with arrest for up to two years or with the fine from ten million lire (Ed: euro 5,164.6) to eighty million lire (Ed: e 41,316.6 euro).

2. At the time of the investigation or, in complex cases, also with a subsequent act of the Guarantor, the perpetrator is given a prescription setting a deadline for regularization not exceeding the technically necessary period of time, which can be extended in case of particular complexity or for the objective difficulty of the fulfilment and in any case not exceeding six months. In the sixty days following the expiry of the term, if the prescription is fulfilled, the perpetrator of the crime is allowed by the Guarantor to pay a sum equal to one quarter of the maximum fine established for the offense. Fulfilment and payment extinguish the offense. The body that issues the prescription and the public prosecutor shall provide in the manner referred to in articles 21, 22, 23 and 24 of the Legislative Decree 19 December 1994, n. 758, as applicable.

(e) Official secrecy (Customs Code, General Tax Code)

- 74 In the fiscal context, Article 66 of the VAT Act (Presidential Decree No. 633 of 26 October 1972) imposes confidentiality on all personnel of the Financial Administration

⁴⁶¹ **Art. 36. Omessa adozione di misure necessarie alla sicurezza dei dati.**

1. Chiunque, essendovi tenuto, omette di adottare le misure necessarie a garantire la sicurezza dei dati personali, in violazione delle disposizioni dei regolamenti di cui ai commi 2 e 3 dell'articolo 15, è punito con l'arresto sino a due anni o con l'ammenda da lire dieci milioni (Ndr: euro 5.164,6) a lire ottanta milioni (Ndr: euro 41.316,6).

2. All'autore del reato, all'atto dell'accertamento o, nei casi complessi, anche con successivo atto del Garante, è impartita una prescrizione fissando un termine per la regolarizzazione non eccedente il periodo di tempo tecnicamente necessario, prorogabile in caso di particolare complessità o per l'oggettiva difficoltà dell'adempimento e comunque non superiore a sei mesi. Nei sessanta giorni successivi allo scadere del termine, se risulta l'adempimento alla prescrizione, l'autore del reato è ammesso dal Garante a pagare una somma pari al quarto del massimo dell'ammenda stabilita per la contravvenzione. L'adempimento e il pagamento estinguono il reato. L'organo che impartisce la prescrizione e il pubblico ministero provvedono nei modi di cui agli articoli 21, 22, 23 e 24 del decreto legislativo 19 dicembre 1994, n. 758, in quanto applicabili.

and the Guardia di Finanza concerning any data or information obtained during tax investigations or verification activities. The only authorised disclosure relates to communications with competent authorities of other EU Member States for the correct assessment and monitoring of VAT, as required by Directive 2003/93/EC and Regulation (EC) No. 1798/2003.

Furthermore, Article 52 of the same Decree subjects any personal searches, the forced opening of sealed containers, and the inspection of documents covered by professional secrecy to prior authorisation by the public prosecutor or the competent judicial authority, in line with Article 103 of the Code of Criminal Procedure. **75**

See Art. 7, 8, 16, 17 DECREE OF THE PRESIDENT OF THE REPUBLIC April 16, 2013, n. 62 Regulation containing the code of conduct for public employees, pursuant to article 54 of Legislative Decree no. 165. (13G00104)/ *DECRETO DEL PRESIDENTE DELLA REPUBBLICA 16 Aprile 2013, n. 62 Regolamento recante codice di comportamento dei dipendenti pubblici, a norma dell'articolo 54 del decreto legislativo 30 marzo 2001, n. 165. (13G00104)* **76**

- Art. 201 c.p.p.
- Moreover see following provisions:

Decree Of The President Of The Republic No 3 of 10 January 1957

Consolidated text of provisions concerning the status of civil servants of the State⁴⁶²

Article 15⁴⁶³ Official secret

1. The Employee must keep the secret of office. He cannot' transmit information to those who are not entitled to administrative measures or operations, in progress or concluded, or news of which he has come to know because of his functions, outside the hypotheses and modalities provided for by the rules on the right of access. Within the scope of its duties, the clerk in charge of an office issues copies and extracts of documents and office documents in cases not prohibited by the legal system.

⁴⁶² DECRETO DEL PRESIDENTE DELLA REPUBBLICA 10 gennaio 1957, n. 3 Testo unico delle disposizioni concernenti lo statuto degli impiegati civili dello Stato.

⁴⁶³ **Art. 15. Segreto d'ufficio.**

1. L'Impiegato deve mantenere il segreto d'ufficio. Non puo' trasmettere a chi non ne abbia diritto informazioni riguardanti provvedimenti od operazioni amministrative, in corso o concluse, ovvero notizie di cui sia venuto a conoscenza a causa delle sue funzioni, al di fuori delle ipotesi e delle modalita' previste dalle norme sul diritto di accesso. Nell'ambito delle proprie attribuzioni, l'impiegato preposto ad un ufficio rilascia copie ed estratti di atti e documenti di ufficio nei casi non vietati dall'ordinamento.

VAT Act DPR, title III, 26/10/1972 n ° 633, GU 11/11/1972⁴⁶⁴

Article 66⁴⁶⁵ Official secret

[1] The employees of the Financial Administration and the officers and agents of the Guardia di Finanza are obliged to keep secrecy for all that concerns the data and news of which they become aware in the fulfilment of the tasks and in the exercise of the powers provided for by this decree.

[2] The communication by the Tax Administration to the competent authorities of the Member States of the European Economic Community (609) of information enabling the correct assessment of the value added tax, in implementation of Directive 2003/93 / EC and of Regulation (EC) no. 1798/2003.

Article 52⁴⁶⁶ Access, inspections and verifications [...]

[3] In any case, the authorisation of the public prosecutor or the nearest judicial authority is required to proceed during access to personal searches and the forced opening of sealed folds, bags, safes, furniture, closets and the like and for the examination of documents and the request for information relating to which professional secrecy is objected, without prejudice to the rule referred to in Article 103 of the Code of Criminal Procedure.

(4) Investigation reports (Customs Code, General Tax Code)

- 77 For example in the area of VAT irregularities investigations by the VAT (tax) offices must be summarized in a special report as requested by Italian law, see Art. 52 para 6 Access, inspections, verifications. Decree of the President of the Republic dated 10/26/1972 n. 633: “For each access, a **report must be drawn up** showing the inspections and surveys carried out, the requests made to the taxpayer or whoever represents him and the replies received. The report must be signed by the taxpayer or by his representative or indicate the reason for the failure to sign. The taxpayer has the **right to have a copy.**”

⁴⁶⁴ Testo Unico IVA D.P.R., titolo III, 26/10/1972 n° 633, G.U. 11/11/1972

⁴⁶⁵ **Art. 66. Segreto d'ufficio.**

[1] Gli impiegati dell'Amministrazione finanziaria e gli ufficiali e agenti della Guardia di finanza sono obbligati al segreto per tutto ciò che riguarda i dati e le notizie di cui vengono a conoscenza nell'adempimento dei compiti e nell'esercizio dei poteri previsti dal presente decreto.

[2] Non è considerata violazione del segreto d'ufficio la comunicazione da parte dell'Amministrazione finanziaria alle competenti autorità degli Stati membri della Comunità economica europea (609) delle informazioni atte a permettere il corretto accertamento dell'imposta sul valore aggiunto, in attuazione della direttiva 2003/93/CE e del regolamento (CE) n. 1798/2003.

⁴⁶⁶ **Art. 52. Accessi, ispezioni e verifiche.**

[...]

[3] E' in ogni caso necessaria l'autorizzazione del procuratore della Repubblica o dell'autorità giudiziaria più vicina per procedere durante l'accesso a perquisizioni personali e all'apertura coattiva di pieghi sigillati, borse, casseforti, mobili, ripostigli e simili e per l'esame di documenti e la richiesta di notizie relativamente ai quali è eccepito il segreto professionale ferma restando la norma di cui all'articolo 103 del codice di procedura penale.

(5) Preservation of Evidence (Customs Code, Tax Decrees)

The preservation of evidence is highly important and thus every relevant code – whether in the area of structural funds, customs duties and accompanying irregularities or in the area of VAT (fraud) irregularities – contains provisions on copying, securing or seizure measures. In the part on investigative powers above the relevant national law was presented. Summarizing it, a provision like Art. 52 access, inspections, verifications of the Decree of the President of the Republic dated 10/26/1972 n. 633 shows that the seizure is sometimes closely connected with the obligation to draw an inspection report: “Documents and deeds can be seized only if it is not possible to reproduce or show their content in the report, as well as in the event of failure to sign or contest the content of the report. Books and records cannot be confiscated; the proceeding bodies can make or have copies or extracts made, they can affix their signature or initials together with the date and the official stamp in the parts that interest them, and they can take precautions to prevent the alteration or theft of the books and of the registers.” **78**

f) A closer look at single measures**aa. Interviewing/Questioning of “persons concerned” (in relation to suspects/defendants)**

Concerning interviews, *Lasagni* outlined in 2015 that: “[i]nterviews are perhaps the means of investigation most affected by the changes made by the new regulation 883/13, which has in part brought the characteristics closer to those of interrogation in criminal proceedings, above all in relation to the right against self-incrimination.”⁴⁶⁷ **79**

Very important is the following: **80**

“The regime applicable to interviews always provides for a reasonable period of notice, however partially differing according to whether the person interviewed is the person involved in the investigation or a simple witness.

In the first case, in fact, the **minimum term is ten working days**, without prejudice to the express consent of the subject or the existence of **urgent reasons** for the investigation duly justified and authorised by the central office; even in this case, however, the **interview must be notified at least 24 hours in advance**. **Shorter terms** are instead envisaged **for witnesses**, for which the notice may be limited to 24 hours, or even disappear altogether in the exceptions indicated above. Furthermore, the **invitation** for the subject involved in the investigation **must indicate their rights**, and in particular that of **being assisted by a trusted person of your choice**, who, however, does **not necessarily** have to be a lawyer.”⁴⁶⁸

⁴⁶⁷ See *Lasagni* 2015, p. 9.

⁴⁶⁸ See again *Lasagni* 2015, pp. 66–67.



Nota bene: See Art. 63 c.p.p.!

81 Interviewing and questioning of “the persons concerned” is possible in nearly every administrative area that concerns the budget.

bb. The taking of statements from Economic Operators

82 Economic operators are defined by Italian and Union law. In Italy Art. 45, 46 of the Legislative Decree 18 April 2016, n. 50 Code of public contracts/ *Decreto legislativo 18 aprile 2016, n. 50 Codice dei contratti pubblici* define the role, eligibility and task of economic operators (in the public procurement sector).

Law of Decriminalisation/Law, 24/11/1981 n ° 689⁴⁶⁹

Article 12⁴⁷⁰ Scope of application

The provisions of this chapter are observed, as applicable and unless otherwise established, for all violations for which the administrative sanction of the payment of a sum of money is envisaged, even when this sanction is not provided in place of a criminal sanction. They do not apply to disciplinary violations.

Section II

Application

Article 13⁴⁷¹ Assessment deeds The bodies responsible for monitoring compliance with the provisions for whose violation the administrative sanction of the payment of a sum of money is envisaged may, to ascertain the violations of their respective competence,

⁴⁶⁹ Legge di depenalizzazione Legge, 24/11/1981 n° 689.

⁴⁷⁰ **Art. 12. Legge di depenalizzazione.** Ambito di applicazione

Le disposizioni di questo capo si osservano, in quanto applicabili e salvo che non sia diversamente stabilito, per tutte le violazioni per le quali è prevista la sanzione amministrativa del pagamento di una somma di denaro, anche quando questa sanzione non è prevista in sostituzione di una sanzione penale. Non si applicano alle violazioni disciplinari.

⁴⁷¹ **Sezione II**

Applicazione

Art. 13. Legge di depenalizzazione. Atti di accertamento

Gli organi addetti al controllo sull’osservanza delle disposizioni per la cui violazione è prevista la sanzione amministrativa del pagamento di una somma di denaro possono, per l’accertamento delle violazioni di rispettiva competenza assumere informazioni e procedere a ispezioni di cose e di luoghi diversi dalla privata dimora, a rilievi segnaletici, descrittivi e fotografici e ad ogni altra operazione tecnica.

Possono altresì procedere al sequestro cautelare delle cose che possono formare oggetto di confisca amministrativa, nei modi e con i limiti con cui il codice di procedura penale consente il sequestro alla polizia giudiziaria.

E’ sempre disposto il sequestro del veicolo a motore o del natante posto in circolazione senza essere coperto dalla assicurazione obbligatoria e del veicolo posto in circolazione senza che per lo stesso sia stato rilasciato il documento di circolazione.

All’accertamento delle violazioni punite con la sanzione amministrativa del pagamento di una somma di denaro possono procedere anche gli ufficiali e gli agenti di polizia giudiziaria, i quali, oltre che esercitare i poteri indicati nei precedenti commi, possono procedere, quando non sia possibile acquisire altrimenti gli elementi di prova, a perquisizioni in luoghi diversi dalla privata dimora, previa autorizzazione motivata del pretore del luogo ove le perquisizioni stesse dovranno essere effettuate. Si applicano le disposizioni del primo comma dell’Art. 333 e del primo e secondo comma dell’Art. 334 del codice di procedura penale.

E’ fatto salvo l’esercizio degli specifici poteri di accertamento previsti dalle leggi vigenti.

obtain information and proceed to inspections of things and places other than private residence, to signalling, descriptive and photographic surveys and to any other technical operation.

They can also proceed with the precautionary seizure of things that may be subject to administrative confiscation, in the ways and with the limits with which the criminal procedure code allows seizure to the judicial police.

The seizure of the motor vehicle or vessel placed in circulation without being covered by compulsory insurance and of the vehicle in circulation without the registration document being issued for the same is always ordered.

The judicial police officers and agents can also proceed to ascertain the violations punished with the administrative sanction of the payment of a sum of money, who, in addition to exercising the powers indicated in the previous paragraphs, can proceed, when it is not possible to acquire otherwise the evidence, to searches in places other than a private residence, subject to the motivated authorisation of the magistrate of the place where the searches must be carried out. The provisions of the first paragraph of Art. 333 and the first and second paragraphs of Art. 334 of the criminal procedure code.

Without prejudice to the exercise of the specific powers of assessment provided for by the laws in force.

cc. Interviewing/Questioning of witnesses

Generally speaking the Code of Administrative process ensures that any interview or questions to witnesses can be presented as evidence in a trial, see Art. 63 (below). **83**

See Article 19. (Visits, inspections and controls on means of transport and on people's luggage).⁴⁷² **84**

dd. Searches and Inspections by national authorities and OLAF officials to discover irregularities in Italy, Art. 19 et seq. Presidential decree No 43 of 23 January 1973 (Customs area), Art. 33 Presidential decree No 600 29 September 1973 (VAT and tax area)

In the area of VAT irregularities and suspected VAT fraud OLAF investigators can rely on the inspection rights granted by the Presidential Decree 10/26/1972 n° 633, which enables powers to the national authorities. For the Art. 52 of this decree see already above under the heading "Investigative powers in the area of VAT fraud". **85**

In the area of customs irregularities, suspected customs fraud or customs offences **86** the customs agents and the staff of the Guardia di Finanza have inspection rights by virtue of the Presidential Decree from 1977:

⁴⁷² Art. 19. (Visite, ispezioni e controlli sui mezzi di trasporto e sui bagagli delle persone)

- 87 The procedure system of the search measure in Italy Art. 19 of the DECREE OF THE PRESIDENT OF THE REPUBLIC No 43 of 23 January 1973 (see above) will apply for searches, too.
- 88 Art. 33 of the Decree of the President of the Republic dated 09/29/1973 n. 600 - Common provisions on the assessment of income taxes./Decreto del Presidente della Repubblica del 29/09/1973 n. 600 -Disposizioni comuni in materia di accertamento delle imposte sui redditi ensures the power to search on premises and in (private) buildings/homes.
- (1) **General remarks**
- (2) **Formal requirements**
- 89 *Sources & national sections 4: Art. 3 OLAF Regulation*

Article 33 of the Decree of the President of the Republic dated 09/29/1973 n. 600 (Visits, inspections and controls on means of transport and on people's luggage)⁴⁷³

Customs officers, in order to ensure compliance with the provisions established by the customs laws and other laws whose application is entrusted to the customs, may proceed, directly or by means of the soldiers of the Guardia di Finanza, to inspect means of transport of any kind crossing the customs line at the customs areas or circulating in those areas. [continued below]

Access, inspections and verifications.

In force from 06/07/2011 modified by: Decree-law of 06/07/2011 n. 98 Article 23

For the execution of accesses, inspections and verifications, the provisions of Art. 52 of the decree of the President of the Republic 26 October 1972, n. 633.⁴⁷⁴

⁴⁷³ **Art. 19. (Visite, ispezioni e controlli sui mezzi di trasporto e sui bagagli delle persone)**

I funzionari doganali, per assicurare l'osservanza delle disposizioni stabilite dalle leggi in materia doganale e dalle altre leggi la cui applicazione e' demandata alle dogane, possono procedere, direttamente od a mezzo dei militari della guardia di finanza, alla visita dei mezzi di trasporto di qualsiasi genere che attraversano la linea doganale in corrispondenza degli spazi doganali o che circolano negli spazi stessi. [...]

⁴⁷⁴ **Articolo 33. Accessi, ispezioni e verifiche.**

Per l'esecuzione di accessi, ispezioni e verifiche si applicano le disposizioni dell'Art. 52 del decreto del Presidente della Repubblica 26 ottobre 1972, n. 633.

Gli uffici delle imposte hanno facolta' di disporre l'accesso di propri impiegati muniti di apposita autorizzazione presso le pubbliche amministrazioni e gli enti indicati al n. 5) dell'Art. 32 allo scopo di rilevare direttamente i dati e le notizie ivi previste e presso gli operatori finanziari di cui al n. 7) dell'articolo 32 allo scopo di procedere direttamente alla acquisizione dei dati, notizie e documenti, relativi ai rapporti ed alle operazioni oggetto delle richieste a norma del n. 7) dello stesso Art. 32, non trasmessi entro il termine previsto nell'ultimo comma di tale articolo o allo scopo di rilevare direttamente la completezza o l'esattezza delle risposte allorché l'ufficio abbia fondati sospetti che le pongano in dubbio.

Tax offices have the right to arrange access for their own employees with appropriate authorisation to public administrations and entities indicated in no. 5) of Art. 32 for the purpose of directly detecting the data and information provided therein and from the financial operators referred to in no. 7) of article 32 in order to proceed directly with the acquisition of data, news and documents, relating to the relationships and operations subject to requests pursuant to n. 7) of the same Art. 32, not sent within the deadline provided for in the last paragraph of this article or for the purpose of directly detecting the completeness or accuracy of the answers when the office has founded suspicions that cast doubt on them.

The Guardia di Finanza cooperates with the tax offices for the acquisition and retrieval of useful elements for the purposes of assessing income and for the repression of violations of the laws on direct taxes by proceeding on its own initiative or at the request of the offices according to the regulations and with the faculties referred to in Art. 32 and the previous paragraph. Furthermore, subject to the authorisation of the judicial authority, which may also be granted by way of derogation from article 329 of the criminal procedure code, it uses and transmits to the tax offices documents, data and information acquired directly or reported and obtained by other Forces. of police, in the exercise of judicial police powers.

For the purposes of the necessary coordination of the action of the financial police with that of the financial offices, agreements will be made, periodically and in cases where systematic investigations must be carried out, between the general directorate of direct taxes and the general command of the financial police and, within the individual circumscriptions, between the heads of the inspectorates and offices and the territorial commands.

In order to avoid repeated access, the financial offices and the financial police commands ***must be immediately notified of the beginning of the inspections and verifications*** undertaken. The office or command receiving the communication may request the

La Guardia di finanza coopera con gli uffici delle imposte per l'acquisizione e il reperimento degli elementi utili ai fini dell'accertamento dei redditi e per la repressione delle violazioni delle leggi sulle imposte dirette procedendo di propria iniziativa o su richiesta degli uffici secondo le norme e con le facolta' di cui all' Art. 32 e al precedente comma. Essa inoltre, previa autorizzazione dell'autorita' giudiziaria, che puo' essere concessa anche in deroga all'articolo 329 del codice di procedura penale, utilizza e trasmette agli uffici delle imposte documenti, dati e notizie acquisiti direttamente o riferiti ed ottenuti dalle altre Forze di polizia, nell'esercizio dei poteri di polizia giudiziaria.

Ai fini del necessario coordinamento dell'azione della guardia di finanza con quella degli uffici finanziari saranno presi accordi, periodicamente e nei casi in cui si debba procedere ad indagini sistematiche, tra la direzione generale delle imposte dirette e il comando generale della guardia di finanza e, nell'ambito delle singole circoscrizioni, fra i capi degli ispettorati e degli uffici e i comandi territoriali.

Gli uffici finanziari e i comandi della Guardia di finanza, per evitare la reiterazione di accessi, si devono dare immediata comunicazione dell'inizio delle ispezioni e verifiche intraprese. L'ufficio o il comando che riceve la comunicazione puo' richiedere all'organo che sta eseguendo l'ispezione o la verifica l'esecuzione di specifici controlli e l'acquisizione di specifici elementi e deve trasmettere i risultati dei controlli eventualmente gia' eseguiti o gli elementi eventualmente gia' acquisiti, utili ai fini dell'accertamento. Al termine delle ispezioni e delle verifiche l'ufficio o il comando che li ha eseguiti deve comunicare gli elementi acquisiti agli organi richiedenti. [...].

body that is carrying out the inspection or verification to carry out specific checks and to acquire specific elements and must transmit the results of any checks already carried out or any elements already acquired, useful for the purposes of the assessment. At the end of the inspections and verifications, the office or command that carried out them must communicate the elements acquired to the requesting bodies.

Law of decriminalisation/Law, 24/11/1981 n° 689⁴⁷⁵

Section II Application

Article 13 Assessment deeds

The⁴⁷⁶ bodies responsible for monitoring compliance with the provisions for whose violation the administrative sanction of the payment of a sum of money is envisaged may, to ascertain the violations of their respective competence, obtain information and proceed to inspections of things and places other than private residence, to signalling, descriptive and photographic surveys and to any other technical operation.

They can also proceed with the precautionary seizure of things that may be subject to administrative confiscation, in the ways and with the limits with which the criminal procedure code allows seizure to the judicial police.

The seizure of the motor vehicle or vessel placed in circulation without being covered by compulsory insurance and of the vehicle in circulation without the registration document being issued for the same is always ordered.

The judicial police officers and agents can also proceed to ascertain the violations punished with the administrative sanction of the payment of a sum of money, who, in addition to exercising the powers indicated in the previous paragraphs, can proceed, when it is not possible to acquire otherwise the evidence, to searches in places other than a private residence, subject to the motivated authorisation of the magistrate of the place

⁴⁷⁵ Legge di depenalizzazione Legge, 24/11/1981 n° 689.

⁴⁷⁶ **Sezione II**

Applicazione

Art. 13. Legge di depenalizzazione. Atti di accertamento

Gli organi addetti al controllo sull'osservanza delle disposizioni per la cui violazione è prevista la sanzione amministrativa del pagamento di una somma di denaro possono, per l'accertamento delle violazioni di rispettiva competenza assumere informazioni e procedere a ispezioni di cose e di luoghi diversi dalla privata dimora, a rilievi segnaletici, descrittivi e fotografici e ad ogni altra operazione tecnica.

Possono altresì procedere al sequestro cautelare delle cose che possono formare oggetto di confisca amministrativa, nei modi e con i limiti con cui il codice di procedura penale consente il sequestro alla polizia giudiziaria.

E' sempre disposto il sequestro del veicolo a motore o del natante posto in circolazione senza essere coperto dalla assicurazione obbligatoria e del veicolo posto in circolazione senza che per lo stesso sia stato rilasciato il documento di circolazione.

All'accertamento delle violazioni punite con la sanzione amministrativa del pagamento di una somma di denaro possono procedere anche gli ufficiali e gli agenti di polizia giudiziaria, i quali, oltre che esercitare i poteri indicati nei precedenti commi, possono procedere, quando non sia possibile acquisire altrimenti gli elementi di prova, a perquisizioni in luoghi diversi dalla privata dimora, previa autorizzazione motivata del pretore del luogo ove le perquisizioni stesse dovranno essere effettuate. Si applicano le disposizioni del primo comma dell'Art. 333 e del primo e secondo comma dell'Art. 334 del codice di procedura penale.

E' fatto salvo l'esercizio degli specifici poteri di accertamento previsti dalle leggi vigenti.

where the searches must be carried out. The provisions of the first paragraph of Art. 333 and the first and second paragraphs of Art. 334 of the criminal procedure code.

Without prejudice to the exercise of the specific powers of assessment provided for by the laws in force.

Article 15⁴⁷⁷ Investigations by analysing samples

If *analysis of samples* is carried out to ascertain the violation, the laboratory manager must communicate the result of the analysis to the person concerned by registered letter with acknowledgment of receipt.

The interested party can request the review of the analysis with the participation of his own technical consultant. The request is presented with a written request to the body that took the samples to be analysed, within fifteen days from the communication of the result of the first analysis, which must be attached to the request itself.

The interested party is notified of the analysis review operations at least ten days before their start. The results of the review of the analysis are communicated to the person concerned by means of a registered letter with acknowledgment of receipt, by the manager of the laboratory that carried out the review of the analysis.

The communications referred to in the first and fourth paragraphs are equivalent to the dispute referred to in the first paragraph of Art. 14 and the deadline for reduced payment pursuant to Art. 16 starts from the communication of the outcome of the first analysis or, when the review of the analysis has been requested, from the communication of the outcome of the same.

If it is not possible to communicate to the interested party in the forms referred to in the first and fourth paragraphs, the provisions of Art. 14. With the decree or with the regional law indicated in the last paragraph of Art. 17, the amount of money that the

⁴⁷⁷ **Art. 15. Legge di depenalizzazione.** Accertamenti mediante analisi di campioni (1)

Se per l'accertamento della violazione sono compiute analisi di campioni, il dirigente del laboratorio deve comunicare all'interessato, a mezzo di lettera raccomandata con avviso di ricevimento, l'esito dell'analisi.

L'interessato può chiedere la revisione dell'analisi con la partecipazione di un proprio consulente tecnico. La richiesta è presentata con istanza scritta all'organo che ha prelevato i campioni da analizzare, nel termine di quindici giorni dalla comunicazione dell'esito della prima analisi, che deve essere allegato all'istanza medesima.

Delle operazioni di revisione dell'analisi è data comunicazione all'interessato almeno dieci giorni prima del loro inizio. I risultati della revisione dell'analisi sono comunicati all'interessato a mezzo di lettera raccomandata con avviso di ricevimento, a cura del dirigente del laboratorio che ha eseguito la revisione dell'analisi.

Le comunicazioni di cui al primo e al quarto comma equivalgono alla contestazione di cui al primo comma dell'Art. 14 ed il termine per il pagamento in misura ridotta di cui all'Art. 16 decorre dalla comunicazione dell'esito della prima analisi o, quando è stata chiesta la revisione dell'analisi, dalla comunicazione dell'esito della stessa.

Ove non sia possibile effettuare la comunicazione all'interessato nelle forme di cui al primo e al quarto comma, si applicano le disposizioni dell'Art. 14. Con il decreto o con la legge regionale indicati nell'ultimo comma dell'Art. 17 sarà altresì fissata la somma di denaro che il richiedente la revisione dell'analisi è tenuto a versare e potranno essere indicati, anche a modifica delle vigenti disposizioni di legge, gli istituti incaricati della stessa analisi.

applicant for the review of the analysis is required to pay will also be fixed and the institutes in charge of the same analysis may be indicated, also by modifying the current provisions of the law.

- 90** In the VAT and tax area, Presidential Decree No. 633 of 26 October 1972 (Art. 52) and Presidential Decree No. 600 of 29 September 1973 grant tax authorities and the Guardia di Finanza extensive rights to conduct access, inspections, and verifications at business premises and under judicial authorisation in private dwellings. These measures include the power to review documents, examine digital data, and obtain information necessary to detect tax evasion or irregularities, with coordination mechanisms ensuring that inspections are not duplicated across financial offices.
- 91** In the customs field, see above Presidential Decree No. 43 of 23 January 1973 empowers customs officers and the Guardia di Finanza to inspect means of transport, goods, and personal luggage within customs areas or during cross-border movements. Such inspections are aimed at verifying compliance with customs legislation and related fiscal laws.
- 92** Where irregularities involve administrative rather than criminal offences, Law No. 689 of 24 November 1981 authorises monitoring bodies to conduct on-site inspections, technical assessments, and precautionary seizures of relevant goods, with judicial approval required for searches in private residences.
- 93** Overall, these frameworks enables OLAF and Italian authorities notably the Guardia di Finanza, customs offices, and tax administration to cooperate effectively in detecting and investigating fraud and irregularities affecting the EU's financial interests, while ensuring judicial oversight and respect for procedural safeguards.

(3) Substantive requirements

<p>Article 19 of the Decree Of The President Of The Republic No 43 of 23 January 1973</p>	<p>Article 33 of the Decree of the President of the Republic dated 09/29/1973 n. 600</p>
<p>[continued from above] ⁴⁷⁸When there <i>are well-founded suspicions of irregularities</i>, the aforesaid means of transport may also be subjected to particularly accurate inspections or technical controls aimed at detecting any concealment of goods.</p> <p>The keeper of the vehicle shall be obliged to lend his cooperation in carrying out the aforesaid checks, observing the provisions issued for this purpose by the customs authorities. The provisions of the preceding subparagraphs shall also apply to luggage and other articles in the possession of persons crossing the customs line at the customs areas or passing through the same areas.</p>	<p>[continued from above] ⁴⁷⁹</p> <p>The accesses to the financial operators referred to in n. 7) of article 32, referred to in the second paragraph, <i>must be carried out, subject to authorisation, by the Revenue Agency, by the Central Director of Assessment or by the Regional Director, or, for the Guardia di Finanza, by the Regional Commander, by officials with a qualification not less than that of tax official and by officers of the Guardia di Finanza with a degree not lower than captain</i>, and must take place at times other than those of the counter open to the public; the inspections and surveys must be carried out in</p>

⁴⁷⁸ Art. 19

[...] Quando sussistono fondati sospetti di irregolarità i mezzi di trasporto predetti possono essere sottoposti anche ad ispezioni o controlli tecnici particolarmente accurati diretti ad accertare eventuali occultamenti di merci. Il detentore del veicolo e' tenuto a prestare la propria collaborazione per l'esecuzione delle verifiche predette, osservando le disposizioni a tal fine impartite dagli organi doganali. Le disposizioni di cui ai precedenti commi si applicano anche nei confronti dei bagagli e degli altri oggetti in possesso delle persone che attraversano la linea doganale in corrispondenza degli spazi doganali o che circolano negli spazi stessi.

⁴⁷⁹ Art. 33.

[...] Gli accessi presso gli operatori finanziari di cui al n. 7) dell'articolo 32, di cui al secondo comma, devono essere eseguiti, previa autorizzazione, per l'Agenzia delle entrate, del Direttore centrale dell'accertamento o del Direttore regionale, ovvero, per la Guardia di finanza, del Comandante regionale, da funzionari con qualifica non inferiore a quella di funzionario tributario e da ufficiali della Guardia di finanza di grado non inferiore a capitano, e devono avvenire in orari diversi da quelli di sportello aperto al pubblico; le ispezioni e le rilevazioni debbono essere eseguite alla presenza del responsabile della sede o dell'ufficio presso cui avvengono o di un suo delegato e di esse e' data immediata notizia a cura del predetto responsabile al soggetto interessato. Coloro che eseguono le ispezioni e le rilevazioni o vengono in possesso dei dati raccolti devono assumere direttamente le cautele necessarie alla riservatezza dei dati acquisiti.

Nell'Art. 52 del Decreto del Presidente della Repubblica 26 ottobre 1972, n. 633, sono aggiunti i seguenti commi: "In deroga alle disposizioni del settimo comma gli impiegati che procedono all'accesso nei locali di soggetti che si avvalgono di sistemi meccanografici, elettronici e simili, hanno facoltà di provvedere con mezzi propri all'elaborazione dei supporti fuori dei locali stessi qualora il contribuente non consenta l'utilizzazione dei propri impianti e del proprio personale.

Se il contribuente dichiara che le scritture contabili o alcune di esse si trovano presso altri soggetti deve esibire una attestazione dei soggetti stessi recante la specificazione delle scritture in loro possesso. Se l'attestazione non e' esibita e se il soggetto che l'ha rilasciata si oppone all'accesso o non esibisce in tutto o in parte le scritture si applicano le "disposizioni del quinto comma".

the presence of the head of the headquarters or office where they take place or his / her delegate and immediate notice of them is given by the aforementioned manager to the person concerned.

In Art. 52 of the Decree of the President of the Republic 26 October 1972, n. 633, the following paragraphs are added:

“Notwithstanding the provisions of the seventh paragraph, the employees who access the premises of subjects who make use of mechanographic, electronic and similar systems, have the right to process the media outside the premises themselves if the taxpayer does not allow the use of its facilities and personnel.

If the taxpayer declares that the accounting records or some of them are found with other subjects, he must produce a certificate from the subjects themselves specifying the records in their possession. If the certificate is not exhibited and if the person who issued it opposes access or does not exhibit the documents in whole or in part, the provisions of the fifth paragraph apply.”

ee. Seizure of other evidence during on-the-spot-checks**Law of decriminalisation/Law, 24/11/1981 n° 689⁴⁸⁰**

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Article 12⁴⁸¹ Scope of application

The provisions of this chapter are observed, as applicable and unless otherwise established, for all violations for which the administrative sanction of the payment of a sum of money is envisaged, even when this sanction is not provided in place of a criminal sanction. They do not apply to disciplinary violations.

Law of decriminalisation/Law, 24/11/1981 n° 689⁴⁸²

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Section II**Application****Article 13⁴⁸³ Assessment deeds**

The bodies responsible for monitoring compliance with the provisions for whose violation the administrative sanction of the payment of a sum of money is envisaged may, to ascertain the violations of their respective competence, obtain information and proceed to inspections of things and places other than private residence, to signalling, descriptive and photographic surveys and to any other technical operation.

They can also proceed with the precautionary seizure of things that may be subject to administrative confiscation, in the ways and with the limits with which the criminal procedure code allows seizure to the judicial police.

⁴⁸⁰ Legge di depenalizzazione Legge, 24/11/1981 n° 689.

⁴⁸¹ **Art. 12. Legge di depenalizzazione.** Ambito di applicazione

Le disposizioni di questo capo si osservano, in quanto applicabili e salvo che non sia diversamente stabilito, per tutte le violazioni per le quali è prevista la sanzione amministrativa del pagamento di una somma di denaro, anche quando questa sanzione non è prevista in sostituzione di una sanzione penale. Non si applicano alle violazioni disciplinari.

⁴⁸² Legge di depenalizzazione Legge, 24/11/1981 n° 689.

⁴⁸³ **Sezione II**

Applicazione

Art. 13. Legge di depenalizzazione. Atti di accertamento

Gli organi addetti al controllo sull'osservanza delle disposizioni per la cui violazione è prevista la sanzione amministrativa del pagamento di una somma di denaro possono, per l'accertamento delle violazioni di rispettiva competenza assumere informazioni e procedere a ispezioni di cose e di luoghi diversi dalla privata dimora, a rilievi segnaletici, descrittivi e fotografici e ad ogni altra operazione tecnica.

Possono altresì procedere al sequestro cautelare delle cose che possono formare oggetto di confisca amministrativa, nei modi e con i limiti con cui il codice di procedura penale consente il sequestro alla polizia giudiziaria.

E' sempre disposto il sequestro del veicolo a motore o del natante posto in circolazione senza essere coperto dalla assicurazione obbligatoria e del veicolo posto in circolazione senza che per lo stesso sia stato rilasciato il documento di circolazione.

All'accertamento delle violazioni punite con la sanzione amministrativa del pagamento di una somma di denaro possono procedere anche gli ufficiali e gli agenti di polizia giudiziaria, i quali, oltre che esercitare i poteri indicati nei precedenti commi, possono procedere, quando non sia possibile acquisire altrimenti gli elementi di prova, a perquisizioni in luoghi diversi dalla privata dimora, previa autorizzazione motivata del pretore del luogo ove le perquisizioni stesse dovranno essere effettuate. Si applicano le disposizioni del primo comma dell'Art. 333 e del primo e secondo comma dell'Art. 334 del codice di procedura penale.

E' fatto salvo l'esercizio degli specifici poteri di accertamento previsti dalle leggi vigenti.

The seizure of the motor vehicle or vessel placed in circulation without being covered by compulsory insurance and of the vehicle in circulation without the registration document being issued for the same is always ordered.

The judicial police officers and agents can also proceed to ascertain the violations punished with the administrative sanction of the payment of a sum of money, who, in addition to exercising the powers indicated in the previous paragraphs, can proceed, when it is not possible to acquire otherwise the evidence, to searches in places other than a private residence, subject to the motivated authorisation of the magistrate of the place where the searches must be carried out. ***The provisions of the first paragraph of Art. 333 and the first and second paragraphs of Art. 334 of the criminal procedure code.***

Without prejudice to the exercise of the specific powers of assessment provided for by the laws in force.

ff. The seizure of digital forensic evidence including bank account information

97 The *Agenzia delle Entrate* (the Italian tax authority) is responsible to keep updated a register with information on bank accounts, the so-called Italian bank accounts database.⁴⁸⁴

98 Judging from the point-of-view of banking and credit laws the Legislative Decree No. 385 of 1 September 1993 should be mentioned for the Italian legal area foremost.

The Consolidated Banking Act provides for the following relevant provisions:

99 Another source is the Legislative Decree 8 November 2021, n. 186.⁴⁸⁵ Art. 1 a) defines the Italian national bank accounts register, which is enshrined in “the section of the tax registry referred to in article 7, sixth paragraph, of decree of the President of the Republic of 29 September 1973, n. 605⁴⁸⁶”.

Article 7 Communications to the tax registry⁴⁸⁷

Public offices must communicate to the tax registry the data and information contained in the acts [...].

⁴⁸⁴ See Italian Ministry of Justice 2012. This area has been researched very well in the past decade, see Fabri 2016, pp. 105, 130 et seq.

⁴⁸⁵ Implementation of Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down provisions to facilitate the use of financial and other information for the purpose of preventing, detecting, investigating or prosecuting certain crimes, and repealing Decision 2000/642 / JHA. (21G00195) (GU General Series n.284 of 11/29/2021 - Ordinary Suppl. N. 40)/ *DECRETO LEGISLATIVO 8 novembre 2021, n. 186 Attuazione della direttiva (UE) 2019/1153 del Parlamento europeo e del Consiglio, del 20 giugno 2019, che reca disposizioni per agevolare l'uso di informazioni finanziarie e di altro tipo a fini di prevenzione, accertamento, indagine o perseguimento di determinati reati, e che abroga la decisione 2000/642/GAI. (21G00195) (GU Serie Generale n.284 del 29-11-2021 - Suppl. Ordinario n. 40).*

⁴⁸⁶ Decree of the President of the republic 29 September 1973, n. 605 Provisions relating to the tax registry and taxpayers' tax code as amended 21/06/2022/*Decreto del presidente della repubblica 29 settembre 1973, n. 605 Disposizioni relative all'anagrafe tributaria e al codice fiscale dei contribuenti.*

⁴⁸⁷ **Art. 7. Comunicazioni all'anagrafe tributaria** D.L.P DELLA REPUBBLICA 29 settembre 1973, n. 605.

The Legislative Decree of 8 November 2021 notifies the national authorities competent to access the national register of bank accounts: **100**

Article 3 Competent national authorities authorised to access the centralised national register of bank accounts⁴⁸⁸ *Legislative Decree No 186 of 8 November 2021* **101**

1. For the purposes of this Decree, the following shall be designated as competent national authorities entitled to access the centralised national register of bank accounts:

- a) the National Asset Recovery Office (ARO), established at the Ministry of the Interior;
- b) the judicial authority and the judicial police officers delegated by the public prosecutor;
- c) the central and inter-provincial services for the fight against organised crime referred to in Article 12 of Decree-Law No. 152 of 13 May 1991, converted, with amendments, by Law No. 186 of 8 November 2021, into a centralised national register of bank accounts. 152 of 13 May 1991, converted, with amendments, by Law No. 203 of 12 July 1991;
- d) the Minister of the Interior;
- e) the Chief of Police - Director General of Public Security;
- f) the Quaestors;
- g) the Director of the Anti-Mafia Investigation Directorate.

2. Without prejudice to what is provided for by Article 9, paragraph 1, and without prejudice to what is provided for by Article 371-bis of the Code of Criminal Procedure, the authorities referred to in paragraph 1 are entitled to access and consult the information on bank accounts, within their respective competences, when necessary for the conduct of criminal proceedings or within the framework of proceedings for the application of the measures of patrimonial prevention referred to in Title II of Book I of the Code of Anti-mafia Laws and Prevention Measures, referred to in Legislative Decree no. 159 of 6 September 2011.

⁴⁸⁸ **Art. 3. Autorita' nazionali competenti abilitate ad accedere al registro nazionale centralizzato dei conti bancari DECRETO LEGISLATIVO 8 novembre 2021, n. 186**

1. Ai fini del presente decreto, sono designati quali autorità nazionali competenti abilitate ad accedere al registro nazionale centralizzato dei conti bancari: a) l'Ufficio nazionale per il recupero dei beni (ARO), istituito presso il Ministero dell'interno; b) l'autorità giudiziaria e gli ufficiali di polizia giudiziaria delegati dal pubblico ministero; c) i servizi centrali e interprovinciali per il contrasto della criminalità organizzata di cui all'articolo 12 del decreto-legge 13 maggio 1991, n. 152, convertito, con modificazioni, dalla legge 12 luglio 1991, n. 203; d) il Ministro dell'interno; e) il Capo della polizia - direttore generale della pubblica sicurezza; f) i questori; g) il direttore della Direzione investigativa antimafia.

2. Fermo restando quanto previsto dall'articolo 9, comma 1, e fatto salvo quanto previsto dall'articolo 371-bis del codice di procedura penale, le autorità di cui al comma 1 sono abilitate ad accedere e consultare le informazioni sui conti bancari, negli ambiti di rispettiva competenza, qualora necessario per lo svolgimento di un procedimento penale o nell'ambito di un procedimento per l'applicazione delle misure di prevenzione patrimoniali di cui al titolo II del libro I del codice delle leggi antimafia e delle misure di prevenzione, di cui al decreto legislativo 6 settembre 2011, n. 159.

3. L'accesso di cui al presente articolo avviene sulla base di convenzioni stipulate tra le Autorità competenti e l'Agenzia delle entrate con le modalità di cui all'articolo 47 del decreto legislativo 18 maggio 2018, n. 51, in quanto compatibili, senza nuovi o maggiori oneri a carico della finanza pubblica.

3. The access referred to in this Article shall take place on the basis of conventions entered into between the competent Authorities and the Revenue Agency in accordance with the procedures set out in Article 47 of Legislative Decree No. 51 of 18 May 2018, insofar as they are compatible, without new or increased burdens on the public finance.

Article 4⁴⁸⁹ Access to and consultation of bank account information by competent authorities*Legislative Decree No 186 of 8 November 2021*

1. In Article 7, paragraph 11 of Presidential Decree No. 605 of 29 September 1973, the following sentence is added at the end: “The information referred to in the first sentence may also be used by the National Asset Recovery Office (ARO), established at the Ministry of the Interior, for the tracing and identification of proceeds of crime and other crime-related assets that may be subject to a freezing, seizure or confiscation order adopted by the competent judicial authority.”

2. Access to and consultation of information on bank accounts, carried out pursuant to this Decree, shall be carried out on a case-by-case basis and, for the competent national authorities referred to in Article 3(1)(c), by judicial police officers designated by their respective heads. In relation to the operations referred to in this paragraph, Articles 21 and 25 of Legislative Decree No. 51 of 18 May 2018 shall apply.

gg. Acquisition of digital evidence

102 Art. 32 of Presidential Decree No. 600/1973 (*Disposizioni comuni in materia di accertamento delle imposte sui redditi*) allows the *Guardia di Finanza* the access to accounting records, financial data, and electronic/digital documentation relevant to tax and financial audits. Art. 33 DPR 600/1973 allows *Guardia* to carry out access, inspections, and document seizures **including IT systems** in anti-fraud investigations. In cases of suspected fraud or irregularities, this article is the legal basis for demanding access to digital information. Art. 52 DPR 633/1972 (IVA – VAT Law) brings *Guardia* power to enter premises and seize electronic accounting data (with judicial authorisation if it involves domiciles). Last but not least, the Legislative Decree No. 74/2000 (tax crimes) enables *Guardia* in case of suspected fraud and this may amount to a criminal offence, act as judicial police and can acquire digital evidence under the *Codice di Procedura Penale* (arts. 247–254 on search and seizure, **including IT data**). Legislative Decree

⁴⁸⁹ **Art. 4. Accesso e consultazioni delle informazioni sui conti bancari da parte delle autorità competenti**
DECRETO LEGISLATIVO 8 novembre 2021, n. 186

1. All'articolo 7, undicesimo comma, del decreto del Presidente della Repubblica 29 settembre 1973, n. 605, e' aggiunto, in fine, il seguente periodo: «Le informazioni di cui al primo periodo sono altresì utilizzabili dall'Ufficio nazionale per il recupero dei beni (ARO), istituito presso il Ministero dell'interno, per il reperimento e l'identificazione dei proventi di reato e di altri beni connessi con reati che possono essere oggetto di un provvedimento di congelamento, sequestro ovvero confisca, adottato dall'autorità giudiziaria competente.»

2. L'accesso alle informazioni sui conti bancari e le relative consultazioni, effettuati ai sensi del presente decreto, sono eseguiti caso per caso e, per le autorità nazionali competenti di cui all'articolo 3, comma 1, lettera c), da ufficiali di polizia giudiziaria designati dai rispettivi responsabili. In relazione alle operazioni di cui al presente comma, trovano applicazione gli articoli 21 e 25 del decreto legislativo 18 maggio 2018, n. 51.

No. 82/2005, the Digital Administration Code ensures digital records and PEC (certified emails) are fully valid as evidence once accessed.

hh. Digital forensic operations within inspections or on-the-spot checks

Two Italian criminal experts have already researched this area for OLAF and have found that Italian legislation in this area is lean, to say the least. Specific legislation in Italy is lacking⁴⁹⁰ and a provision requiring police or administrative authorities to print out digital evidence to make it physically manageable still applies.⁴⁹¹ Only if the whole situation proves to constitute a crime, the Codice di procedura penale may apply, which provides in its ss. 247 special provisions that relate to computer searches and exploiting digital(ly stored) evidence.⁴⁹²

- DECREE-LAW 10 June 1994, n. 357 Urgent tax provisions to accelerate the recovery of the economy and employment, as well as to reduce the obligations for the taxpayer./DECRETO-LEGGE 10 giugno 1994, n. 357 Disposizioni tributarie urgenti per accelerare la ripresa dell'economia e dell'occupazione, nonche' per ridurre gli adempimenti a carico del contribuente.⁴⁹³

Article 7 Simplification of requirements and reduction of penalties for formal irregularities DECREE-LAW 10 June 1994, n. 357

3. In the event of irregularities in the drawing up of the documents accompanying goods in transit referred to in Presidential Decree of 6 October 1978, no. 627 of 6 October 1978, the pecuniary penalty shall not apply if the offender pays to the competent VAT office a sum equal to one hundredth of the maximum of the aforesaid penalty within sixty days from the date of delivery or notification of the report of findings: a) it is in any case possible to identify the parties; b) the nature, quality and quantity, indicated in figures or in letters, of the goods transported correspond to those found during the control.⁴⁹⁴

⁴⁹⁰ Nicolicchia 2017, pp.27 et seq.

⁴⁹¹ See already in-depth Bartoli and Lasagni 2021b, pp. 87 et seq. and see Bartoli and Lasagni 2021a, pp. 207–235.

⁴⁹² Bartoli and Lasagni 2021b, p. 90.

⁴⁹³ Bartoli and Lasagni 2021b, p. 90.

⁴⁹⁴ **Art. 7. Semplificazione di adempimenti e riduzione di sanzioni per irregolarita' formali DECRETO-LEGGE 10 giugno 1994, n. 357**

1. COMMA SOPPRESSO DALLA L. 8 AGOSTO 1994, N. 489.

2. COMMA SOPPRESSO DALLA L. 8 AGOSTO 1994, N. 489.

3. In caso di irregolarita' nella compilazione dei documenti di accompagnamento dei beni viaggianti di cui al decreto del Presidente della Repubblica 6 ottobre 1978, n. 627, la pena pecuniaria non si applica se il trasgressore versa all'ufficio dell'imposta sul valore aggiunto competente una somma pari a un centesimo del massimo della suddetta pena entro sessanta giorni successivi alla data della consegna o della notifica del verbale di constatazione: a) sia comunque possibile identificare le parti; b) la natura, la qualita' e la quantita', indicata in cifre o in lettere, dei beni trasportati risultino corrispondenti a quelle riscontrate in sede di controllo.

4. In Article 39, third paragraph, of Presidential Decree No. 633 of 26 October 1972, the words from: "is allowed" until the end of the paragraph. 4-bis. In Article 41 of Presidential Decree No. 633 of 26 October 1972, as amended, the following paragraph shall be inserted after the fourth paragraph: "However, if the breach of the obligations provided for in the fourth paragraph does not lead to changes in the results of the periodic settlements or in the annual return, only the sanctions provided for in Article 47, first paragraph, no. 3) shall apply and no tax shall be payable".

4-ter. To all intents and purposes of law, the keeping of any accounting register by means of mechanical/computerised systems shall be considered as lawful/regular in the absence of the recording on paper supports, within the terms provided by law, of the data relative to the fiscal year for which the terms for the presentation of the relative annual declarations have not expired by more than three months, when also during controls and inspections the same are updated on the appropriate magnetic supports and are printed at the same time as the request made by the competent bodies and in their presence.

4-quater. By way of derogation from the provisions of paragraph 4-ter, (the keeping of any accounting register by means of electronic systems on any support) is, in any case, considered regular in the absence of transcription on paper supports within the terms of the law, if at the time of access, inspection or verification the same are updated on the aforesaid electronic systems and are printed at the time of the request made by the proceeding bodies and in their presence. (10)

g) National procedural rules for "checks and inspections" by the assisting national authority

105 The national procedural rules have been stated above in the respective place concerning a measure.

4. Nell'articolo 39, terzo comma, del decreto del Presidente della Repubblica 26 ottobre 1972, n. 633, sono soppresse le parole da: "e' ammesso" fino alla fine del comma. 4-bis. All'articolo 41 del decreto del Presidente della Repubblica 26 ottobre 1972, n. 633, successive modificazioni, dopo il quarto comma e' inserito il seguente: "Tuttavia, qualora la violazione degli obblighi previsti al quarto comma non comporti variazioni nelle risultanze delle liquidazioni periodiche o in sede di dichiarazione annuale, si applicano esclusivamente le sanzioni previste all'articolo 47, primo comma, n. 3) e non e' dovuto pagamento d'imposta".

4-ter. A tutti gli effetti di legge, la tenuta di qualsiasi registro contabile con sistemi meccanografici e' considerata regolare in difetto di trascrizione su supporti cartacei, nei termini di legge, dei dati relativi all'esercizio per il quale i termini di presentazione delle relative dichiarazioni annuali non siano scaduti da oltre tre mesi, allorquando anche in sede di controlli ed ispezioni gli stessi risultino aggiornati sugli appositi supporti magnetici e vengano stampati contestualmente alla richiesta avanzata dagli organi competenti ed in loro presenza.

4-quater. In deroga a quanto previsto dal comma 4-ter, (la tenuta di qualsiasi registro contabile con sistemi elettronici su qualsiasi supporto) e', in ogni caso, considerata regolare in difetto di trascrizione su supporti cartacei nei termini di legge, se in sede di accesso, ispezione o verifica gli stessi risultano aggiornati sui predetti sistemi elettronici e vengono stampati a seguito della richiesta avanzata dagli organi precedenti ed in loro presenza. (10)

h) Cooperation and mutual assistance agreements

Cooperation is not only a buzz-word. Since major developments with Regulation 2013/883 OLAF can conclude special administrative agreements (see on its Website) and herewith cooperate with many authorities around the world.⁴⁹⁵ OLAF has a special relationship to the ADM agency i.e. the *Agenzia delle Dogane e dei Monopoli* 106

See Piazza Mastai, 12 - 00153 in Rome (Roma), which can interact e.g. with Customs Authorities around the world, too.

Next, there are further authorities that can receive on-the-spot investigation instructions by OLAF: 107

→ DAEC, *Direzioni antifraud e controlli*.

These authorities work closely together with OLAF and can be contacted via the usual ways of communication and via established channels.⁴⁹⁶ 108

In the area of customs fraud investigations, a report from the European Council from 2011 revealed the following information from practice: 109

“The Italian Customs Agency is the main contact for the exchange of information and provides 109



administrative assistance to ensure the correct application of the law on customs and agricultural matters referred to in EC Regulation 515/97.

In this context, there is a systematic exchange of information, data and documents aimed at dealing with cases initiated by OLAF (INF AM) in relation to possible EU fraud cases. In dealing with such cases (administrative investigations under reg. EC 1073/99 and reg. EURATOM 1074/99) OLAF collaborates with member countries participating, with their staff, in the missions carried out in third countries. During the visits conducted by mixed teams composed of officials from OLAF and the customs administrations of member countries, investigations are carried out, coordinated by OLAF, with access to manufacturing companies, government agencies, shipping companies, etc., for the purpose of obtaining evidence to allow the detection of frauds and the recovery of payments due.

In some cases, OLAF spoke in support of the member countries involved at a later stage, supporting coordination and exchange of information between customs administrations and the Courts.”⁴⁹⁷

⁴⁹⁵ See Lasagni 2015, pp. 13–15.

⁴⁹⁶ See the video the ADM published on its relationship to OLAF <https://www.adm.gov.it/portale/inf-am-casi-investigativi-olaf>. Accessed 30 June 2025.

⁴⁹⁷ European Council 2011, pp. 68–69.

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.

- 1 From the **point-of-view of Union law** OLAF will mainly conduct investigations in order to gather evidence for measures stipulated by the Union Civil Servants Act, which is the REGULATION No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community.⁴⁹⁸ This may include financial actors, Accounting officers or impress administrators, Authorising officers and members of staff implementing the Union budget under the Financial Regulation.⁴⁹⁹ But para. 8 of the OLAF Reg. does refer to the competent national authorities and national law, too:

a) References to national law, para 8

- 2 The references to national law in para. 8 of Art. 4 of the OLAF Reg. can be interpreted as follows: the area of the *Codice disciplinare*, which is not one single law but various different Acts/Decreets.

⁴⁹⁸ See OJ P 045 14.6.1962, p. 1385, as amended 1.1.2022.

⁴⁹⁹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 PE/13/2018/REV/1, OJ L 193, 30.7.2018, pp. 1–222.

The main Legislative Decree in this area is the Legislative Decree 30 March 2001, n. 165, which stipulates general rules on the organization of work employed by public administrations.⁵⁰⁰ Art. 55-sexies of this Decree is worth being presented here: 3

Article 55-sexies⁵⁰¹ (Disciplinary liability for conduct detrimental to the administration and limitation of liability for disciplinary action) 4

1. The breach of obligations concerning work performance, which has led to the conviction of the administration to pay damages, shall entail, in any case, against the employee responsible, the application of suspension from service with deprivation of pay from a minimum of three days up to a maximum of three months, in proportion to the amount of compensation, unless the conditions for the application of a more serious disciplinary sanction are met.

2. Except for the cases envisaged in paragraph 1, when an employee causes serious damage to the normal functioning of the office to which he/she belongs due to inefficiency or professional incompetence ascertained by the administration pursuant to the legislative and contractual provisions concerning the evaluation of the personnel of the public administrations, he/she shall be placed on non-active status, at the outcome of the disciplinary proceedings that establish this responsibility, and the provisions of Article 33, paragraph 8, and Article 34, paragraphs 1, 2, 3 and 4, shall apply to him/her. The

⁵⁰⁰ Decreto Legislativo 30 marzo 2001, n. 165 Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche.

⁵⁰¹ **Art. 55-sexies (Responsabilita' disciplinare per condotte pregiudizievoli per l'amministrazione e limitazione della responsabilita' per l'esercizio dell'azione disciplinare).**

(1. La violazione di obblighi concernenti la prestazione lavorativa, che abbia determinato la condanna dell'amministrazione al risarcimento del danno, comporta comunque, nei confronti del dipendente responsabile, l'applicazione della sospensione dal servizio con privazione della retribuzione da un minimo di tre giorni fino ad un massimo di tre mesi, in proporzione all'entita' del risarcimento, salvo che ricorrano i presupposti per l'applicazione di una piu' grave sanzione disciplinare.) (71)

2. Fuori dei casi previsti nel comma 1, il lavoratore, quando cagiona grave danno al normale funzionamento dell'ufficio di appartenenza, per inefficienza o incompetenza professionale accertate dall'amministrazione ai sensi delle disposizioni legislative e contrattuali concernenti la valutazione del personale delle amministrazioni pubbliche, e' collocato in disponibilita', all'esito del procedimento disciplinare che accerta tale responsabilita', e si applicano nei suoi confronti le disposizioni di cui all'articolo 33, comma 8, e all'articolo 34, commi 1, 2, 3 e 4. Il provvedimento che definisce il giudizio disciplinare stabilisce le mansioni e la qualifica per le quali puo' avvenire l'eventuale ricollocamento. Durante il periodo nel quale e' collocato in disponibilita', il lavoratore non ha diritto di percepire aumenti retributivi sopravvenuti.

(3. Il mancato esercizio o la decadenza dall'azione disciplinare, dovuti all'omissione o al ritardo, senza giustificato motivo, degli atti del procedimento disciplinare, inclusa la segnalazione di cui all'articolo 55-bis, comma 4, ovvero a valutazioni manifestamente irragionevoli di insussistenza dell'illecito in relazione a condotte aventi oggettiva e palese rilevanza disciplinare, comporta, per i soggetti responsabili, l'applicazione della sospensione dal servizio fino a un massimo di tre mesi, salva la maggiore sanzione del licenziamento prevista nei casi di cui all'articolo 55-quater, comma 1, lettera f-ter), e comma 3-quinquies. Tale condotta, per il personale con qualifica dirigenziale o titolare di funzioni o incarichi dirigenziali, e' valutata anche ai fini della responsabilita' di cui all'articolo 21 del presente decreto. Ogni amministrazione individua preventivamente il titolare dell'azione disciplinare per le infrazioni di cui al presente comma commesse da soggetti responsabili dell'ufficio di cui all'articolo 55-bis, comma 4.) (71)

4. La responsabilita' civile eventualmente configurabile a carico del dirigente in relazione a profili di illiceita' nelle determinazioni concernenti lo svolgimento del procedimento disciplinare e' limitata, in conformita' ai principi generali, ai casi di dolo o colpa grave.

measure defining the disciplinary Judgment shall establish the duties and the qualification for which any re-assignment may take place. During the period in which he/she is placed on non-active status, the employee shall not be entitled to receive any increase in salary.

(3. Failure to exercise or lapse of disciplinary action, due to omission or delay, without justified reason, of the acts of the disciplinary procedure, including the report referred to in Article 55-bis, paragraph 4, or to manifestly unreasonable assessments of the non-existence of the offence in relation to conduct of objective and obvious disciplinary relevance entails, for the persons responsible, the application of suspension from service for up to a maximum of three months, without prejudice to the greater sanction of dismissal provided for in the cases referred to in Article 55-quater, paragraph 1, letter f-ter), and paragraph 3-quinquies. Such conduct, for personnel with managerial status or holder of managerial functions or appointments, is also assessed for the purposes of the liability referred to in Article 21 of this Decree. Each administration shall identify in advance the holder of the disciplinary action for the offences referred to in this paragraph committed by persons in charge of the office referred to in Article 55-bis, paragraph 4.) (71)

4. Any civil liability that may be incurred by the manager in connection with unlawfulness in the decisions concerning the conduct of the disciplinary procedure shall be limited, in accordance with the general principles, to cases of wilful misconduct or gross negligence.

b) Competent authorities

- 5 The relevant public administrations (*amministrazioni pubbliche*) are the administrative supervisory authorities and internal control bodies as well as the employer.
- 6 In Italy, a distinction must still be made between the level of the employer (managerial level) and the level of the staff member, as the legislator has taken different laws as a basis (non-managerial personnel).
- 7 The national labour agreement (*Contratto collettivo nazionale di lavoro*, CCNL) also regulates disciplinary measures and sanctions.
See → Art. 41, 42 disciplinary sanctions CCNL
- 8 For the management level Art. 2 Directorial Decree 11 January 2022 (Decreto direttoriale 11 gennaio 2022) stipulates that the Office for Disciplinary Proceedings (*Ufficio procedimenti disciplinari*) is competent in this area.

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.

When the Director-General of OLAF decides **not to open an investigation**, the office can refer relevant information to the competent national authorities of the Member State concerned or to the relevant EU institution, body, office, or agency for further action. This **referral** is intended to ensure that any issues identified are addressed appropriately according to Union and Italian laws or the internal rules of the relevant institution. **1**

a) Competent authorities

To whom information must be sent depends on the area of suspected irregularities or fraud⁵⁰²: **2**

- ADM Italian Customs and Monopoly Agency/Agenzia delle Dogane e dei Monopoli **3**
- ANAC National Anti-corruption Unit/Authority/Autorità Nazionale Anticorruzione
- AgEA Agency for Agricultural Grants/Agenzia per le Erogazioni in Agricoltura
- DNAA National Anti-Mafia and Anti-Terrorism Directorate /Direzione nazionale antimafia e antiterrorismo
- Mipaaf Ministry of Agricultural, Food and Forestry Policies /Ministero delle politiche agricole alimentari e forestali
- Investigators of the Ministry of Agriculture:
- *Comando Carabinieri Politiche Agricole*
- Agricultural authorities
- Ae Revenue Agency/Agenzia Delle Entrate
- ARO The National Asset Recovery Office/l'Ufficio nazionale per il recupero dei beni
- Ministry of Finance
- Carabinieri
- Value added tax offices, Art. 51 Presidential Decree No 633/1972
- Provincial tax commissions
- Regional tax commissions
- Tax Police/Guardia di Finanza

⁵⁰² Weber 2003, p. 192.

- Customs authority/Dogane

b) National rules

4

Code of the Administrative Process/Codice del processo amministrativo

Chapter II Admission and taking of tests

Article 64⁵⁰³ Availability, burden and evaluation of the test

1. It is the responsibility of the parties to provide evidence that is available to them concerning the facts underlying the claims and objections.
2. Except in the cases provided for by law, the judge must base the decision on the evidence proposed by the parties as well as the facts not specifically contested by the established parties.
3. The administrative judge may order, even ex officio, the acquisition of information and documents useful for deciding that they are available to the public administration.
4. The judge must evaluate the evidence according to his prudent judgment and may derive evidence from the behaviour of the parties during the trial.

Article 65⁵⁰⁴ Presidential and collegiate investigation

1. The president of the section or a magistrate delegated by him adopts, at the motivated request of a party, the measures necessary to ensure the completeness of the investigation.
2. When the preliminary investigation is ordered by the college, the latter proceeds with an order with which the date of the next hearing to deal with the appeal is set at the same time. The decision on technical advice and verification is always taken by the college.

⁵⁰³ **Capo II**

Ammissione e assunzione delle prove

Art. 64. Disponibilità, onere e valutazione della prova.

1. Spetta alle parti l'onere di fornire gli elementi di prova che siano nella loro disponibilità riguardanti i fatti posti a fondamento delle domande e delle eccezioni.
2. Salvi i casi previsti dalla legge, il giudice deve porre a fondamento della decisione le prove proposte dalle parti nonché i fatti non specificatamente contestati dalle parti costituite.
3. Il giudice amministrativo può disporre, anche d'ufficio, l'acquisizione di informazioni e documenti utili ai fini del decidere che siano nella disponibilità della pubblica amministrazione.
4. Il giudice deve valutare le prove secondo il suo prudente apprezzamento e può desumere argomenti di prova dal comportamento tenuto dalle parti nel corso del processo.

⁵⁰⁴ **Art. 65. Istruttoria presidenziale e collegiale.**

1. Il presidente della sezione o un magistrato da lui delegato adotta, su istanza motivata di parte, i provvedimenti necessari per assicurare la completezza dell'istruttoria.
2. Quando l'istruttoria è disposta dal collegio, questo provvede con ordinanza con la quale è contestualmente fissata la data della successiva udienza di trattazione del ricorso. La decisione sulla consulenza tecnica e sulla verifica è sempre adottata dal collegio.
3. Ove l'amministrazione non provveda al deposito del provvedimento impugnato e degli altri atti ai sensi dell'articolo 46, il presidente o un magistrato da lui delegato ovvero il collegio ordina, anche su istanza di parte, l'esibizione degli atti e dei documenti nel termine e nei modi opportuni.

3. If the administration fails to deposit the contested provision and the other acts pursuant to article 46, the president or a magistrate delegated by him or the college orders, even at the request of a party, the exhibition of the acts and documents within the deadline and in the appropriate ways.

Article 66⁵⁰⁵ Verification

1. The college, when it arranges the verification, by ordinance identifies the organism that must carry it out, formulates the questions and establishes a deadline for its completion and for the filing of the final report. The head of the verifying body, or his delegate if the judge has authorised the delegation, is responsible for carrying out all operations.

2. The order is communicated by the secretariat to the verifying body.

3. With the ordinance referred to in paragraph 1, the college may arrange for an advance on the remuneration to be paid to the inspecting body, or its delegate.

4. Once the verification has been completed, at the request of the body or its delegate, the chairman pays the total remuneration due to the verifier by decree, placing it provisionally at the expense of one of the parties. The rates established by the provisions on legal costs apply, or, if lower, those established for the services rendered by the verifying body. With the sentence defining the judgment, the Board definitively regulates the related burden.

Article 67 Technical office consultancy

1. With the order with which it arranges the technical consultancy of the office,⁵⁰⁶ the college appoints the consultant, formulates the questions and sets the deadline within

⁵⁰⁵ **Art. 66. Verificazione.**

1. Il collegio, quando dispone la verificazione, con ordinanza individua l'organismo che deve provvedervi, formula i quesiti e fissa un termine per il suo compimento e per il deposito della relazione conclusiva. Il capo dell'organismo verificatore, o il suo delegato se il giudice ha autorizzato la delega, è responsabile del compimento di tutte le operazioni.

2. L'ordinanza è comunicata dalla segreteria all'organismo verificatore.

3. Con l'ordinanza di cui al comma 1 il collegio può disporre che venga corrisposto all'organismo verificatore, o al suo delegato, un anticipo sul compenso.

4. Terminata la verificazione, su istanza dell'organismo o del suo delegato, il presidente liquida con decreto il compenso complessivamente spettante al verificatore, ponendolo provvisoriamente a carico di una delle parti. Si applicano le tariffe stabilite dalle disposizioni in materia di spese di giustizia, ovvero, se inferiori, quelle eventualmente stabilite per i servizi resi dall'organismo verificatore. Con la sentenza che definisce il giudizio il Collegio regola definitivamente il relativo onere.

⁵⁰⁶ **Art. 67. Consulenza tecnica d'ufficio.**

1. Con l'ordinanza con cui dispone la consulenza tecnica d'ufficio, il collegio nomina il consulente, formula i quesiti e fissa il termine entro cui il consulente incaricato deve comparire dinanzi al magistrato a tal fine delegato per assumere l'incarico e prestare giuramento ai sensi del comma 4. L'ordinanza è comunicata al consulente tecnico a cura della segreteria.

which the consultant in charge must appear before the magistrate delegated for this purpose to take on the task and provide oath pursuant to paragraph 4. The order is communicated to the technical consultant by the secretariat.

2. Any requests for abstention and recusal of the consultant are proposed, under penalty of forfeiture, within the term referred to in paragraph 1.

3. The board, with the same ordinance referred to in paragraph 1, assigns subsequent terms, extendable pursuant to article 154 of the code of civil procedure, for:

a) the payment to the technical consultant of an advance on his remuneration;

b) the possible appointment, with a declaration received from the secretary, of the parties' technical consultants, who, in addition to being able to attend the operations of the judge's consultant and to speak with him, may participate in the hearing and in the council chamber whenever the judge's consultant is present to clarify and carry out, with the authorisation of the president, their observations on the results of the technical investigations;

c) the transmission, by the office technical consultant, of an outline of his report to the parties or, if appointed, to their technical consultants;

d) the transmission to the official technical consultant of any observations and conclusions of the technical consultants of the party;

e) the filing of the final report in the secretariat, in which the official technical consultant also gives an account of the observations and conclusions of the consultants of the party and specifically takes a position on them.

4. The oath of the consultant is made before the magistrate delegated for this purpose, according to the procedures established by article 193 of the code of civil procedure.

5. The overall remuneration due to the official consultant is paid, at the end of the operations, pursuant to article 66, paragraph 4, first and third period.

2. Le eventuali istanze di astensione e ricusazione del consulente sono proposte, a pena di decadenza, entro il termine di cui al comma 1.

3. Il collegio, con la stessa ordinanza di cui al comma 1, assegna termini successivi, prorogabili ai sensi dell'articolo 154 del codice di procedura civile, per:

a) la corresponsione al consulente tecnico di un anticipo sul suo compenso;

b) l'eventuale nomina, con dichiarazione ricevuta dal segretario, di consulenti tecnici delle parti, i quali, oltre a poter assistere alle operazioni del consulente del giudice e a interloquire con questo, possono partecipare all'udienza e alla camera di consiglio ogni volta che è presente il consulente del giudice per chiarire e svolgere, con l'autorizzazione del presidente, le loro osservazioni sui risultati delle indagini tecniche;

c) la trasmissione, ad opera del consulente tecnico d'ufficio, di uno schema della propria relazione alle parti ovvero, se nominati, ai loro consulenti tecnici;

d) la trasmissione al consulente tecnico d'ufficio delle eventuali osservazioni e conclusioni dei consulenti tecnici di parte;

e) il deposito in segreteria della relazione finale, in cui il consulente tecnico d'ufficio dà altresì conto delle osservazioni e delle conclusioni dei consulenti di parte e prende specificamente posizione su di esse.

4. Il giuramento del consulente è reso davanti al magistrato a tal fine delegato, secondo le modalità stabilite dall'articolo 193 del codice di procedura civile.

5. Il compenso complessivamente spettante al consulente d'ufficio è liquidato, al termine delle operazioni, ai sensi dell'articolo 66, comma 4, primo e terzo periodo.

Article 68⁵⁰⁷ Terms and procedures for the investigation

1. The president or the delegated magistrate, or the college, in admitting the investigative means establish the terms to be observed and determine the place and method of recruitment by applying, as far as compatible, the provisions of the code of civil procedure.
2. One of the members of the panel is delegated to take the evidence outside the hearing, who proceeds with the assistance of the secretary who draws up the relative minutes. The secretary informs the parties at least five days in advance of the day, time and place of the operations.
3. If the investigation is to be carried out outside the territory of the Republic, the request is formulated by letter of rogatory letter or by delegation to the competent consul, pursuant to article 204 of the code of civil procedure.
4. The secretary communicates to the parties the notice that the preliminary investigation has been carried out and that the related documents are at the disposal of the secretariat.

Decree Of The President Of The Republic October 26, 1972, n. 633**Title IV Assessment and collection Article 51****Duties and powers of the value added tax offices**

[1] The value added tax offices check the declarations presented and the payments made by taxpayers, detect any omissions and check and collect the taxes or higher taxes due;⁵⁰⁸

⁵⁰⁷ **Art. 68. Termini e modalità dell'istruttoria.**

1. Il presidente o il magistrato delegato, ovvero il collegio, nell'ammettere i mezzi istruttori stabiliscono i termini da osservare e ne determinano il luogo e il modo dell'assunzione applicando, in quanto compatibili, le disposizioni del codice di procedura civile.
2. Per l'assunzione fuori udienza dei mezzi di prova è delegato uno dei componenti del collegio, il quale procede con l'assistenza del segretario che redige i relativi verbali. Il segretario comunica alle parti almeno cinque giorni prima il giorno, l'ora e il luogo delle operazioni.
3. Se il mezzo istruttorio deve essere eseguito fuori dal territorio della Repubblica, la richiesta è formulata mediante rogatoria o per delega al console competente, ai sensi dell'articolo 204 del codice di procedura civile.
4. Il segretario comunica alle parti l'avviso che l'istruttoria disposta è stata eseguita e che i relativi atti sono presso la segreteria a loro disposizione.

⁵⁰⁸ **Titolo IV****Accertamento e riscossione****Art. 51. Attribuzioni e poteri degli Uffici dell'imposta sul valore aggiunto.**

[1] Gli Uffici dell'imposta sul valore aggiunto controllano le dichiarazioni presentate e i versamenti eseguiti dai contribuenti, ne rilevano l'eventuale omissione e provvedono all'accertamento e alla riscossione delle imposte o maggiori imposte dovute; vigilano sull'osservanza degli obblighi relativi alla fatturazione e registrazione delle operazioni e alla tenuta della contabilità e degli altri obblighi stabiliti dal presente decreto; provvedono alla irrogazione delle pene pecuniarie e delle soprattasse e alla presentazione del rapporto all'autorità giudiziaria per le violazioni sanzionate penalmente. Il controllo delle dichiarazioni presentate e l'individuazione dei soggetti che ne hanno omesso la presentazione sono effettuati sulla base di criteri selettivi fissati annualmente dal Ministro delle finanze che tengano anche conto della capacità operativa degli Uffici stessi. I criteri selettivi per l'attività di accertamento di cui al periodo precedente, compresa quella a mezzo di studi di settore, sono rivolti prioritariamente nei confronti dei soggetti diversi dalle imprese manifatturiere che svolgono la loro attività in conto terzi per altre imprese in misura non inferiore al 90 per cento.

[2] Per l'adempimento dei loro compiti gli Uffici possono:

- 1) procedere all'esecuzione di accessi, ispezioni e verifiche ai sensi dell'Art. 52;
- 2) invitare i soggetti che esercitano imprese, arti o professioni, indicandone il motivo, a comparire di persona o a mezzo di rappresentanti per esibire documenti e scritture, ad esclusione dei libri e dei registri in corso di scritturazione, o per fornire dati, notizie e chiarimenti rilevanti ai fini degli accertamenti nei loro confronti anche relativamente ai rapporti ed alle operazioni, i cui dati, notizie e documenti siano stati acquisiti a norma del numero 7) del presente comma, ovvero rilevati a norma dell'articolo 52, ultimo comma, o dell'articolo 63, primo comma, o acquisiti ai sensi dell'articolo 18, comma 3, lettera b), del decreto legislativo 26 ottobre 1995, n. 504. I dati ed elementi attinenti ai rapporti ed alle operazioni acquisiti e rilevati rispettivamente a norma del numero 7) e dell'articolo 52, ultimo comma, o dell'articolo 63, primo comma, o acquisiti ai sensi dell'articolo 18, comma 3, lettera b), del decreto legislativo 26 ottobre 1995, n. 504, sono posti a base delle rettifiche e degli accertamenti previsti dagli articoli 54 e 55 se il contribuente non dimostra che ne ha tenuto conto nelle dichiarazioni o che non si riferiscono ad operazioni imponibili; sia le operazioni imponibili sia gli acquisti si considerano effettuati all'aliquota in prevalenza rispettivamente applicata o che avrebbe dovuto essere applicata. Le richieste fatte e le risposte ricevute devono essere verbalizzate a norma del sesto comma dell'articolo 52;
- 3) inviare ai soggetti che esercitano imprese, arti e professioni, con invito a restituirli compilati e firmati, questionari relativi a dati e notizie di carattere specifico rilevanti ai fini dell'accertamento, anche nei confronti di loro clienti e fornitori;
- 4) invitare qualsiasi soggetto ad esibire o trasmettere, anche in copia fotostatica, documenti e fatture relativi a determinate cessioni di beni o prestazioni di servizi ricevute ed a fornire ogni informazione relativa alle operazioni stesse;
- 5) richiedere agli organi e alle Amministrazioni dello Stato, agli enti pubblici non economici, alle società ed enti di assicurazione ed alle società ed enti che effettuano istituzionalmente riscossioni e pagamenti per conto di terzi la comunicazione, anche in deroga a contrarie disposizioni legislative, statutarie o regolamentari, di dati e notizie relativi a soggetti indicati singolarmente o per categorie. Alle società ed enti di assicurazione, per quanto riguarda i rapporti con gli assicurati del ramo vita, possono essere richiesti dati e notizie attinenti esclusivamente alla durata del contratto di assicurazione, all'ammontare del premio e alla individuazione del soggetto tenuto a corrisponderlo. Le informazioni sulla categoria devono essere fornite, a seconda della richiesta, cumulativamente o specificamente per ogni soggetto che ne fa parte. Questa disposizione non si applica all'Istituto centrale di statistica e agli Ispettorati del lavoro per quanto riguarda le rilevazioni loro commesse dalla legge, e, salvo il disposto del n. 7), alle banche, alla società Poste italiane Spa, per le attività finanziarie e creditizie, alle società ed enti di assicurazione per le attività finanziarie, agli intermediari finanziari, alle imprese di investimento, agli organismi di investimento collettivo del risparmio, alle società di gestione del risparmio e alle società fiduciarie;
- 6) richiedere copie o estratti degli atti e dei documenti depositati presso i notai, i procuratori del registro, i conservatori dei registri immobiliari e gli altri pubblici ufficiali;
- 6-bis) richiedere, previa autorizzazione del direttore centrale dell'accertamento dell'Agenzia delle entrate o del direttore regionale della stessa, ovvero, per il Corpo della guardia di finanza, del comandante regionale, ai soggetti sottoposti ad accertamento, ispezione o verifica il rilascio di una dichiarazione contenente l'indicazione della natura, del numero e degli estremi identificativi dei rapporti intrattenuti con le banche, la società Poste italiane Spa, gli intermediari finanziari, le imprese di investimento, gli organismi di investimento collettivo del risparmio, le società di gestione del risparmio e le società fiduciarie, nazionali o stranieri, in corso ovvero estinti da non più di cinque anni dalla data della richiesta. Il richiedente e coloro che vengono in possesso dei dati raccolti devono assumere direttamente le cautele necessarie alla riservatezza dei dati acquisiti;
- 7) richiedere, previa autorizzazione del direttore centrale dell'accertamento dell'Agenzia delle entrate o del direttore regionale della stessa, ovvero, per il Corpo della guardia di finanza, del comandante regionale, alle banche, alla società Poste italiane Spa, per le attività finanziarie e creditizie, alle società ed enti di assicurazione per le attività finanziarie, agli intermediari finanziari, alle imprese di investimento, agli organismi di investimento collettivo del risparmio, alle società di gestione del risparmio e alle società fiduciarie, dati, notizie e documenti relativi a qualsiasi rapporto intrattenuto od operazione effettuata, ivi compresi i servizi prestati, con i loro clienti, nonché alle garanzie prestate da terzi o dagli operatori finanziari sopra indicati e le generalità dei soggetti per i quali gli stessi operatori finanziari abbiano effettuato le suddette operazioni e servizi o con i quali abbiano intrattenuto rapporti di natura finanziaria. Alle società fiduciarie di cui alla legge 23 novembre 1939, n. 1966, e a quelle iscritte nella sezione speciale dell'albo di cui all'articolo 20 del testo unico delle disposizioni in materia di intermediazione finanziaria, di cui al decreto legislativo 24 febbraio 1998, n. 58, può essere richiesto, tra l'altro, specificando i periodi temporali di interesse, di comunicare le generalità dei soggetti per conto dei quali esse hanno detenuto o

supervise compliance with the obligations relating to the invoicing and recording of operations and the keeping of accounts and other obligations established by this decree; they arrange for the imposition of pecuniary penalties and surcharges and for the presentation of the report to the judicial authority for violations punishable by law. The control of the submitted declarations and the identification of the subjects who have failed to present them are carried out on the basis of selective criteria established annually by the Minister of Finance which also take into account the operational capacity of the Offices themselves. The selection criteria for the verification activity referred to in the previous period, including that by means of sector studies, are aimed primarily at subjects other than manufacturing companies that carry out their activities on behalf of third parties for other companies to a no lesser extent 90 percent.

[2] For the fulfilment of their duties, the Offices may:

- 1) proceed with the execution of accesses, inspections and verifications pursuant to Art. 52;
- 2) invite individuals who exercise businesses, arts or professions, indicating the reason, to appear in person or by means of representatives to exhibit documents and writings, with the exception of books and registers in the course of writing, or to provide data, news and clarifications relevant for the purposes of the investigations against them also in relation to the relationships and transactions, the data, information and documents of which have been acquired pursuant to number 7) of this paragraph, or detected pursuant to Article 52, last paragraph, or of article 63, first paragraph, or acquired pursuant to article 18, paragraph 3, letter b), of Legislative Decree no. 504. The data and elements

amministrato o gestito beni, strumenti finanziari e partecipazioni in imprese, inequivocamente individuati. La richiesta deve essere indirizzata al responsabile della struttura accentrata, ovvero al responsabile della sede o dell'ufficio destinatario che ne dà notizia immediata al soggetto interessato; la relativa risposta deve essere inviata al titolare dell'ufficio procedente;

7-bis) richiedere, con modalità stabilite con decreto di natura non regolamentare del Ministro dell'economia e delle finanze, da adottare d'intesa con l'Autorità di vigilanza in coerenza con le regole europee e internazionali in materia di vigilanza e, comunque, previa autorizzazione del direttore centrale dell'accertamento dell'Agenzia delle entrate o del direttore regionale della stessa, ovvero, per il Corpo della guardia di finanza, del comandante regionale, ad autorità ed enti, notizie, dati, documenti e informazioni di natura creditizia, finanziaria e assicurativa, relativi alle attività di controllo e di vigilanza svolte dagli stessi, anche in deroga a specifiche disposizioni di legge.

[3] Gli inviti e le richieste di cui al precedente comma devono essere fatti a mezzo di raccomandata con avviso di ricevimento, fissando per l'adempimento un termine non inferiore a quindici giorni ovvero, per il caso di cui al n. 7), non inferiore a trenta giorni. Il termine può essere prorogato per un periodo di venti giorni su istanza dell'operatore finanziario, per giustificati motivi, dal competente direttore centrale o direttore regionale per l'Agenzia delle entrate, ovvero, per il Corpo della guardia di finanza, dal comandante regionale. Si applicano le disposizioni dell'Art. 52 del D.P.R. 29 settembre 1973, n. 600, e successive modificazioni.

[4] Le richieste di cui al secondo comma, numero 7), nonché le relative risposte, anche se negative, sono effettuate esclusivamente in via telematica. Con provvedimento del direttore dell'Agenzia delle entrate sono stabilite le disposizioni attuative e le modalità di trasmissione delle richieste, delle risposte, nonché dei dati e delle notizie riguardanti i rapporti e le operazioni indicati nel citato numero 7).

[5] Per l'inottemperanza agli inviti di cui al secondo comma, numeri 3) e 4), si applicano le disposizioni di cui ai commi terzo e quarto dell'articolo 32 del decreto del Presidente della Repubblica 29 settembre 1973, n. 600, e successive modificazioni.

relating to the relationships and transactions acquired and recorded respectively in accordance with number 7) and Article 52, last paragraph, or of article 63, first paragraph, or acquired pursuant to article 18, paragraph 3, letter b), of Legislative Decree no. 504, are placed at the basis of the adjustments and assessments provided for in articles 54 and 55 if the taxpayer does not prove that he has taken them into account in the returns or that they do not refer to taxable transactions; both the taxable transactions and the purchases are considered to have been made at the rate mainly applied or that should have been applied. The requests made and the replies received must be recorded in accordance with the sixth paragraph of article 52; they are placed at the basis of the adjustments and assessments provided for in articles 54 and 55 if the taxpayer does not demonstrate that he has taken them into account in the returns or that they do not refer to taxable transactions; both the taxable transactions and the purchases are considered to have been made at the rate mainly applied or that should have been applied. The requests made and the replies received must be recorded in accordance with the sixth paragraph of article 52; they are placed at the basis of the adjustments and assessments provided for in articles 54 and 55 if the taxpayer does not demonstrate that he has taken them into account in the returns or that they do not refer to taxable transactions; both the taxable transactions and the purchases are considered to have been made at the rate mainly applied or that should have been applied. The requests made and the replies received must be recorded in accordance with the sixth paragraph of article 52;

3) send to subjects who exercise businesses, arts and professions, with an invitation to return them completed and signed, questionnaires relating to data and information of a specific nature relevant for the purpose of assessment, also towards their customers and suppliers;

4) invite any person to exhibit or transmit, even in photocopy, documents and invoices relating to certain sales of goods or services received and to provide any information relating to the operations themselves;

5) require the bodies and administrations of the State, non-economic public bodies, insurance companies and bodies and companies and bodies that institutionally carry out collections and payments on behalf of third parties for communication, even in derogation of contrary legislative provisions, statutory provisions or regulations, of data and information relating to subjects indicated individually or by categories. With regard to relations with life insurance policyholders, insurance companies and entities may be asked for data and information relating exclusively to the duration of the insurance contract, the amount of the premium and the identification of the person required to pay it. Category information must be provided, depending on the request, cumulatively or specifically for each subject that is part of it. This provision does not apply to the Central Statistical Institute and to the Labor Inspectorates as regards the surveys committed to them by law, and, without prejudice to the provisions of n. 7), to banks, to Poste Italiane Spa, for financial and credit activities, to insurance companies and entities for financial

activities, to financial intermediaries, to investment companies, to collective investment schemes, to asset management and trust companies;

6) request copies or extracts of the deeds and documents filed with notaries, registry prosecutors, real estate registrars and other public officials;

6-bis) request, subject to the authorisation of the central director of the assessment of the Revenue Agency or of the regional director of the same, or, for the Financial Guard Corps, of the regional commander, to the subjects subjected to assessment, inspection or verification the issue of a declaration containing the indication of the nature, number and identification details of the relationships with banks, Poste Italiane Spa, financial intermediaries, investment firms, collective investment schemes, investment companies savings management and trust companies, national or foreign, in progress or extinguished for no more than five years from the date of the request. The applicant and those who come into possession of the data collected must directly take the necessary precautions for the confidentiality of the data acquired;

as well as to the guarantees given by third parties or by the financial operators indicated above and the details of the subjects for whom the same financial operators have carried out the aforementioned transactions and services or with whom they have had financial relationships. To the trust companies referred to in the law of 23 November 1939, n. 1966, and to those registered in the special section of the register referred to in article 20 of the consolidated text of the provisions on financial intermediation, as per Legislative Decree no. 58, it may be required, among other things, by specifying the time periods of interest, to communicate the personal details of the subjects on behalf of which they have held or administered or managed unequivocally identified assets, financial instruments and equity investments. The request must be addressed to the head of the centralized structure, or to the head of the recipient office or office who immediately informs the interested party; the relative reply must be sent to the holder of the proceeding office;

7-bis) to request, in accordance with the procedures established by a non-regulatory decree of the Minister of Economy and Finance, to be adopted in agreement with the Supervisory Authority in accordance with the European and international rules on supervision and, in any case, subject to the authorisation of the central director of the assessment of the Revenue Agency or the regional director of the same, or, for the Financial Guard Corps, the regional commander, to authorities and entities, news, data, documents and information of a credit nature, financial and insurance, relating to the control and supervisory activities carried out by the same, also in derogation from specific provisions of the law.

[3] The invitations and requests referred to in the preceding paragraph must be made by registered letter with acknowledgment of receipt, setting a deadline for the fulfilment of not less than fifteen days or, for the case referred to in n. 7), not less than thirty days. The term can be extended for a period of twenty days at the request of the financial

5

operator, for justified reasons, by the competent central director or regional director for the Revenue Agency, or, for the Guard Corps of finance, by the regional commander. The provisions of Art. 52 of the DPR 29 September 1973, n. 600, and subsequent amendments.

[4] The requests referred to in the second paragraph, number 7), as well as the relative replies, even if negative, are made exclusively electronically. The implementing provisions and the methods for transmitting requests, responses, as well as data and news regarding the relationships and operations indicated in the aforementioned number 7) are established by order of the director of the Revenue Agency.

[5] For non-compliance with the invitations referred to in the second paragraph, numbers 3) and 4), the provisions of the third and fourth paragraphs of article 32 of the decree of the President of the Republic of 29 September 1973, n. 600, and subsequent amendments.

Article 52 Access, inspections and verifications

[1] The Value Added Tax Offices may arrange for financial administration employees to access premises intended for the exercise of commercial, agricultural, artistic or professional activities, as well as those used by non-commercial entities and those who enjoy the benefits referred to in the third sector code referred to in article 1, paragraph 2, letter b), of law no. 106, to carry out documentary inspections, verifications and researches and any other survey deemed useful for the assessment of the tax and for the repression of evasion and other violations.⁵⁰⁹ Employees who log in must have the appropriate authorisation indicating their purpose, issued by the head of the office they

⁵⁰⁹ **Art. 52. Accessi, ispezioni e verifiche.**

[1] Gli Uffici dell'imposta sul valore aggiunto possono disporre l'accesso d'impiegati dell'Amministrazione finanziaria nei locali destinati all'esercizio d'attività commerciali, agricole, artistiche o professionali, nonché in quelli utilizzati dagli enti non commerciali e da quelli che godono dei benefici di cui al codice del Terzo settore di cui all'articolo 1, comma 2, lettera b), della legge 6 giugno 2016, n. 106, per procedere ad ispezioni documentali, verificazioni e ricerche e ad ogni altra rilevazione ritenuta utile per l'accertamento dell'imposta e per la repressione dell'evasione e delle altre violazioni. Gli impiegati che eseguono l'accesso devono essere muniti d'apposita autorizzazione che ne indica lo scopo, rilasciata dal capo dell'ufficio da cui dipendono. Tuttavia per accedere in locali che siano adibiti anche ad abitazione, è necessaria anche l'autorizzazione del procuratore della Repubblica. In ogni caso, l'accesso nei locali destinati all'esercizio di arti o professioni dovrà essere eseguito in presenza del titolare dello studio o di un suo delegato (1).

[2] L'accesso in locali diversi da quelli indicati nel precedente comma può essere eseguito, previa autorizzazione del procuratore della Repubblica, soltanto in caso di gravi indizi di violazioni delle norme del presente decreto, allo scopo di reperire libri, registri, documenti, scritture ed altre prove delle violazioni.

[3] E' in ogni caso necessaria l'autorizzazione del procuratore della Repubblica o dell'autorità giudiziaria più vicina per procedere durante l'accesso a perquisizioni personali e all'apertura coattiva di pieghi sigillati, borse, casseforti, mobili, ripostigli e simili e per l'esame di documenti e la richiesta di notizie relativamente ai quali è eccepito il segreto professionale ferma restando la norma di cui all'articolo 103 del codice di procedura penale.

depend on. However, to access premises that are also used as homes, the authorisation of the public prosecutor is also required. In any case, access to the premises intended for the exercise of arts or professions must be carried out in the presence of the owner of the studio or his delegate (1).

[2] Access to premises other than those indicated in the previous paragraph can be performed, subject to authorisation by the public prosecutor, only in the event of serious indications of violations of the rules of this decree, in order to find books, registers, documents, writings and other evidence of violations.

[3] In any case, the authorisation of the public prosecutor or the nearest judicial authority is required to proceed during access to personal searches and the forced opening of sealed folds, bags, safes, furniture, closets and the like and for the examination of documents and the request for information relating to which professional secrecy is objected, without prejudice to the rule referred to in Article 103 of the Code of Criminal Procedure.

[4] The documentary inspection extends to all books, registers, documents and records, including those whose keeping and conservation are not mandatory, which are located in the premises where access is made, or which are in any case accessible via computer equipment installed in these premises.

[4] L'ispezione documentale si estende a tutti i libri, registri, documenti e scritture, compresi quelli la cui tenuta e conservazione non sono obbligatorie, che si trovano nei locali in cui l'accesso viene eseguito, o che sono comunque accessibili tramite apparecchiature informatiche installate in detti locali.

[5] I libri, registri, scritture e documenti di cui è rifiutata l'esibizione non possono essere presi in considerazione a favore del contribuente ai fini dell'accertamento in sede amministrativa o contenziosa. Per rifiuto d'esibizione si intendono anche la dichiarazione di non possedere i libri, registri, documenti e scritture e la sottrazione di essi alla ispezione.

[6] Di ogni accesso deve essere redatto processo verbale da cui risultino le ispezioni e le rilevazioni eseguite, le richieste fatte al contribuente o a chi lo rappresenta e le risposte ricevute. Il verbale deve essere sottoscritto dal contribuente o da chi lo rappresenta ovvero indicare il motivo della mancata sottoscrizione. Il contribuente ha diritto di averne copia.

[7] I documenti e le scritture possono essere sequestrati soltanto se non è possibile riprodurne o farne constare il contenuto nel verbale, nonché in caso di mancata sottoscrizione o di contestazione del contenuto del verbale. I libri e i registri non possono essere sequestrati; gli organi procedenti possono eseguirne o farne eseguire copie o estratti, possono apporre nelle parti che interessano la propria firma o sigla insieme con la data e il bollo d'ufficio e possono adottare le cautele atte ad impedire l'alterazione o la sottrazione dei libri e dei registri.

[8] Le disposizioni dei commi precedenti si applicano anche per l'esecuzione di verifiche e di ricerche relative a merci o altri beni viaggianti su autoveicoli e natanti adibiti al trasporto per conto di terzi.

[9] In deroga alle disposizioni del settimo comma gli impiegati che procedono all'accesso nei locali di soggetti che si avvalgono di sistemi meccanografici, elettronici e simili, hanno facoltà di provvedere con mezzi propri all'elaborazione dei supporti fuori dei locali stessi qualora il contribuente non consenta l'utilizzazione dei propri impianti e del proprio personale.

[10] Se il contribuente dichiara che le scritture contabili o alcune di esse si trovano presso altri soggetti deve esibire una attestazione dei soggetti stessi recante la specificazione delle scritture in loro possesso. Se l'attestazione non è esibita e se il soggetto che l'ha rilasciata si oppone all'accesso o non esibisce in tutto o in parte le scritture si applicano le disposizioni del quinto comma.

[11] Per l'esecuzione degli accessi presso le pubbliche amministrazioni e gli enti indicati al n. 5) dell'articolo 51 e presso gli operatori finanziari di cui al 7) dello stesso articolo 51, si applicano le disposizioni del secondo e sesto comma dell'articolo 33 del decreto del Presidente della Repubblica 29 settembre 1973, n. 600, e successive modificazioni.

[5] The books, registers, deeds and documents whose exhibition is refused cannot be taken into consideration in favour of the taxpayer for the purposes of administrative or litigation assessment. By refusal to exhibit we also mean the declaration of not possessing the books, registers, documents and records and the removal of them from inspection.

[6] For each access, a report must be drawn up showing the inspections and surveys carried out, the requests made to the taxpayer or whoever represents him and the replies received. The report must be signed by the taxpayer or by his representative or indicate the reason for the non-subscription. The taxpayer has the right to have a copy.

[7] Documents and records can be seized only if it is not possible to reproduce or have their content recorded in the report, as well as in the event of failure to sign or contest the content of the report. Books and records cannot be confiscated; the proceeding bodies can make or have copies or extracts made, they can affix their signature or initials together with the date and the official stamp in the parts that interest them, and they can take precautions to prevent the alteration or theft of the books and of the registers.

[8] The provisions of the preceding paragraphs also apply to the execution of checks and searches relating to goods or other goods in transit on motor vehicles and boats used for transport on behalf of third parties.

[9] Notwithstanding the provisions of the seventh paragraph, the employees who access the premises of subjects who make use of mechanographic, electronic and similar systems, have the right to process the media outside the premises themselves if the taxpayer does not allow the use of its facilities and personnel.

[10] If the taxpayer declares that the accounting records or some of them are held by other subjects, he must produce a certificate from the subjects themselves specifying the records in their possession. If the certificate is not exhibited and if the person who issued it opposes access or does not exhibit the documents in whole or in part, the provisions of the fifth paragraph apply.

[11] For the execution of the accesses to the public administrations and the bodies indicated in n. 5) of article 51 and to the financial operators referred to in 7) of the same article 51, the provisions of the second and sixth paragraphs of article 33 of the decree of the President of the Republic no. 600, and subsequent amendments.

Decree of the President of the Republic of 29 September 1973 n. 600Common provisions on the assessment of income taxes⁵¹⁰**Title IV Assessment And Checks****Article 31⁵¹¹ Duties of the tax offices**

The tax offices check the returns presented by taxpayers and withholding agents, detect any omissions and settle the taxes or higher taxes due; supervise compliance with the obligations relating to the keeping of accounting records and the other obligations established in this decree and in the other provisions relating to income taxes; they arrange for the imposition of financial penalties provided for in Title V and the submission of the report to the judicial authority for violations punishable by criminal law.

The competence lies with the district office in whose district is the tax domicile of the person obliged to make the return on the date on which it was or should have been presented.

The tax authorities exchange, with the other competent authorities of the member states of the European Economic Community, the information necessary to ensure the correct assessment of taxes on income and assets. To this end, it may authorise the presence on the territory of the State of officials of the tax administrations of other Member States.

The Tax Administration collects the information to be provided to the aforementioned authorities in the manner and within the limits set for the assessment of income taxes.

⁵¹⁰ Decreto Del Presidente Della Repubblica 29 settembre 1973, n. 600 – Disposizioni comuni in materia di accertamento delle imposte sui redditi

⁵¹¹ **TITOLO IV**

ACCERTAMENTO E CONTROLLI**Art. 31. Attribuzioni degli uffici delle imposte.**

Gli uffici delle imposte controllano le dichiarazioni presentate dai contribuenti e dai sostituti d'imposta, ne rilevano l'eventuale omissione e provvedono alla liquidazione delle imposte o maggiori imposte dovute; vigilano sull'osservanza degli obblighi relativi alla tenuta delle scritture contabili e degli altri obblighi stabiliti nel presente decreto e nelle altre disposizioni relative alle imposte sui redditi; provvedono alla irrogazione delle pene pecuniarie previste nel titolo V e alla presentazione del rapporto all'autorità giudiziaria per le violazioni sanzionate penalmente. La competenza spetta all'ufficio distrettuale nella cui circoscrizione è il domicilio fiscale del soggetto obbligato alla dichiarazione alla data in cui questa è stata o avrebbe dovuto essere presentata.

L'Amministrazione finanziaria provvede allo scambio, con le altre autorità competenti degli Stati membri della Comunità economica europea, delle informazioni necessarie per assicurare il corretto accertamento delle imposte sul reddito e sul patrimonio. Essa, a tal fine, può autorizzare la presenza nel territorio dello Stato di funzionari delle amministrazioni fiscali degli altri Stati membri.(2)

L'Amministrazione finanziaria provvede alla raccolta delle informazioni da fornire alle predette autorità con le modalità ed entro i limiti previsti per l'accertamento delle imposte sul reddito.

Code of Tax Process⁵¹²

Article 7⁵¹³ **Powers of the tax commissions**

1. The tax commissions, for the purposes of investigation and within the limits of the facts inferred by the parties, exercise all the right to access, request data, information and clarifications conferred to the tax offices and the local authority by each tax law.
2. The tax commissions, when it is necessary to acquire information of particular complexity, may request specific reports from technical bodies of the State administration or other public bodies including the Guardia di Finanza, or arrange for technical advice. The remuneration due to the technical consultants cannot exceed those provided for by the law of 8 July 1980, n. 319, and subsequent amendments and additions.
- [3. The tax commissions are always given the right to order the parties to deposit documents deemed necessary for the decision of the dispute.]
4. Oath and witness evidence are not allowed.
5. The tax commissions, if they consider a regulation or a general act relevant to the decision to be illegitimate, do not apply it, in relation to the object raised in the court, without prejudice to any appeal in a different competent forum.

⁵¹² Codice del processo tributario 2021, Decreto legislativo, 31/12/1992 n° 546, G.U. 13/01/1993.

⁵¹³ **Art. 7. Codice del processo tributario 2021** Poteri delle commissioni tributarie

1. Le commissioni tributarie, ai fini istruttori e nei limiti dei fatti dedotti dalle parti, esercitano tutte le facoltà di accesso, di richiesta di dati, di informazioni e chiarimenti conferite agli uffici tributari ed all'ente locale da ciascuna legge d'imposta.
2. Le commissioni tributarie, quando occorre acquisire elementi conoscitivi di particolare complessità, possono richiedere apposite relazioni ad organi tecnici dell'amministrazione dello Stato o di altri enti pubblici compreso il Corpo della Guardia di finanza, ovvero disporre consulenza tecnica. I compensi spettanti ai consulenti tecnici non possono eccedere quelli previsti dalla legge 8 luglio 1980, n. 319 , e successive modificazioni e integrazioni.
3. È sempre data alle commissioni tributarie facoltà di ordinare alle parti il deposito di documenti ritenuti necessari per la decisione della controversia.]
4. Non sono ammessi il giuramento e la prova testimoniale.
5. Le commissioni tributarie, se ritengono illegittimo un regolamento o un atto generale rilevante ai fini della decisione, non lo applicano, in relazione all'oggetto dedotto in giudizio, salva l' eventuale impugnazione nella diversa sede competente.

Decree Of The President Of The Republic No 43 of 23 January 1973Approval of the Consolidated Text of Customs Legislation⁵¹⁴

Article 19⁵¹⁵ Visits, inspections and checks on means of transport and baggage of people Customs officials, to ensure compliance with the provisions established by customs laws and others laws whose application is delegated to customs, can proceed, directly or by means of the soldiers of the guard of finance, to the visit of the means of transport of any kind that cross the customs line at the customs areas or that circulate in the spaces themselves. When they exist well founded suspected irregularities the aforementioned means of transport may also be subjected to inspections or technical checks particularly careful aimed at ascertaining any concealments of goods.

The keeper of the vehicle is required to lend his own collaboration for the execution of the aforementioned checks, observing the provisions for this purpose issued by the customs authorities.

The provisions referred to in the previous paragraphs are also applied in against baggage and other objects in people's possession crossing the customs line at the spaces customs or circulating in the spaces themselves.

[Article 6 Access to information in databases prior to the opening of an investigation – omitted]

⁵¹⁴ Decreto Del Presidente Della Repubblica 23 gennaio 1973, n. 43 Approvazione del testo unico delle disposizioni legislative in materia doganale

⁵¹⁵ **Art. 19.** Visite, ispezioni e controlli sui mezzi di trasporto e sui bagagli delle persone I funzionari doganali, per assicurare l'osservanza delle disposizioni stabilite dalle leggi in materia doganale e dalle altre leggi la cui applicazione e' demandata alle dogane, possono procedere, direttamente od a mezzo dei militari della guardia di finanza, alla visita dei mezzi di trasporto di qualsiasi genere che attraversano la linea doganale in corrispondenza degli spazi doganali o che circolano negli spazi stessi. Quando sussistono fondati sospetti di irregolarita' i mezzi di trasporto predetti possono essere sottoposti anche ad ispezioni o controlli tecnici particolarmente accurati diretti ad accertare eventuali occultamenti di merci. Il detentore del veicolo e' tenuto a prestare la propria collaborazione per l'esecuzione delle verifiche predette, osservando le disposizioni a tal fine impartite dagli organi doganali. Le disposizioni di cui ai precedenti commi si applicano anche nei confronti dei bagagli e degli altri oggetti in possesso delle persone che attraversano la linea doganale in corrispondenza degli spazi doganali o che circolano negli spazi stessi.

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 (4);
- (b) where strictly necessary for the purposes of the investigation, the record of transactions.

The request of the Office shall include a justification of the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation. Such request shall refer only to information referred to in points (a) and (b) of the first subparagraph.

Member States shall notify to the Commission the **relevant competent authorities** for the purposes of points (a) and (b) of the first subparagraph.

6. Where investigations show that it might be appropriate to take precautionary administrative measures to protect the financial interests of the Union, the Office shall without delay inform the institution, body, office or agency concerned of the investigation in progress. The information supplied shall include the following:

- (a) the identity of the official, other servant, member of an institution or body, head of office or agency, or staff member concerned and a summary of the facts in question;
- (b) any information that could assist the institution, body, office or agency concerned in deciding on the appropriate precautionary administrative measures to be taken in order to protect the financial interests of the Union;
- (c) any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or, in the case of an external investigation, within the competence of a national authority, **in accordance with the national rules applicable to investigations**.

The institution, body, office or agency concerned may at any time consult the Office with a view to taking, in close cooperation with the Office, any appropriate precautionary measures, including measures for the safeguarding of evidence. The institution, body, office or agency concerned shall inform the Office without delay about any precautionary measures taken.

7. Where necessary, it shall be for the competent authorities of the Member States, at the Office's request, to take the *appropriate precautionary measures under their national law*, in particular measures for the safeguarding of evidence.

a) References to national law

Sources & national sections 5: Art. 7 OLAF Regulation

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Para 3	<p>ADMINISTRATIVE PROCEDURE ACT/Legge sul procedimento amministrativo,</p> <p>CODE OF THE ADMINISTRATIVE PROCESS/Codice del processo amministrativo,</p> <p>Legislative Decree 31 December 1992, n. 546</p> <p>Provisions on the tax process in implementation of the delegation to the Government contained in Art. 30 of the law of 30 December 1991, n. 413.⁵¹⁶</p> <p>Code of Administrative Process: Chapter II Admission and taking of tests Art. 64 et seq.</p> <p>Presidential Decree of October 26, 1972, n. 633 – Establishment and regulation of value added tax: Duties and powers of the value added tax offices, Art. 51 Access, inspections and verifications, Art. 52 Collaboration with the finance police, Art. 63 para 1</p> <p>Presidential Decree of 29 September 1973 n. 600 Common provisions on the assessment of income taxes:⁵¹⁷</p> <p>Powers of the offices, Art. 32 Access, inspections and verifications, Art. 33</p> <p>Code of Tax Process: Powers of the tax commissions, Art. 7</p> <p>Presidential Decree No 43 of 23 January 1973 Approval of the Consolidated Text of Customs Legislation:</p>
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⁵¹⁶ Decreto Legislativo 31 dicembre 1992, n. 546 Disposizioni sul processo tributario in attuazione della delega al Governo contenuta nell'Art. 30 della legge 30 dicembre 1991, n. 413.

⁵¹⁷ Nicolichia 2017, p. 13.

	<p>Visits, inspections and checks on means of transport and baggage of people, Art. 19</p> <p>Customs control of persons, Art. 20</p> <p>Land customs surveillance area, Art. 22</p>
Para 3a (a) (b)	<p>The relevant competent authorities have been enumerated above (see → d)d) Competent authoritiesCompetent authorities).</p> <p>The Commission can be part of a criminal investigation following an OLAF Report or a recommendation and it therefore has an interested of being informed about these information.</p>
Para 6 (c)	<p>CPC, Tax Code (Investigations for tax offences. Art. 51, 52 (Powers of the offices) by the VAT tax fraud offices see Code of Administrative Process:</p> <p>Art. 136 Provisions on communications and IT deposits</p> <p>DECREE OF THE PRESIDENT OF THE REPUBLIC October 26, 1972, n. 633 Establishment and regulation of value added tax.⁵¹⁸</p> <p>Art. 32 para 1 n°7 (Powers of the offices) Decree of the President of the Republic of 29 September 1973 n. 600 Common provisions on the assessment of income taxes</p>
Para 7	<p>Presidential Decree No 633/1972</p> <p>Access, inspections and verifications, Art. 52</p> <p>Presidential Decree No 600/1973</p> <p>Powers of the offices, Art. 32</p> <p>Access, inspections and verifications, Art. 33</p> <p>Code of Administrative Process:</p> <p>Title II Precautionary measures</p> <p>Collective precautionary measures, Art. 55</p> <p>Monochratic precautionary measures, Art. 56</p> <p>Expenses of the precautionary procedure, Art. 57</p> <p>Et seq.</p> <p>Presidential Decree No 43 of 23 January 1973 Approval of the Consolidated Text of Customs Legislation:</p> <p>Visits, inspections and checks on means of transport and baggage of people, Art. 19</p> <p>Customs control of persons, Art. 20</p>

⁵¹⁸ Decreto Del Presidente Della Repubblica 26 ottobre 1972, n. 633.

<p>Land customs surveillance area, Art. 22</p> <p>Preventive visit. Change of declaration, Art. 58 Visit of the goods. Customs bill, Art. 59</p> <p>TITLE V SPECIAL CUSTOMS PROCEDURES AND REGIMES Chapter I52 by the VAT tax fraud offices see DE-CREE OF THE PRESIDENT OF THE RE-PUBLIC October 26, 1972, n. 633 Establishment and regulation of value added tax SIMPLIFIED ASSESSMENT PROCEDURES SECTION ONE: Simplified procedure for customs operations relating to goods coming from abroad. Art. 232 et seq.</p> <p>Law no 689/81 on decriminalisation: Art. 13 Assessment deeds (precautionary seizure)</p>

b) References to national authorities

- ADM Italian *Guardia di Finanza*
- Customs and Monopoly Agency/*Agenzia delle authority/Dogane e dei Monopoli*
- ANAC National Anti-corruption Unit/Authority/*Autorità Nazionale Anticorruzione*
- AgEA Agency for Investigators of the Ministry of Agriculture
- *Comando Carabinieri Politiche Agricole*
- Agricultural Grants/*Agenzia per le Erogazioni in Agricoltura authorities*
- DNAA National Anti-Mafia and Anti-Terrorism Directorate /*Direzione nazionale antimafia e antiterrorismo*
- Mipaaf Ministry of Agricultural, Food and Forestry Policies /*Ministero delle politiche agricole alimentari e forestali*
- Age Revenue Agency/*Agenzia Delle Entrate*
- ARO The National Asset Recovery Office/*l'Ufficio nazionale per il recupero dei beni*
- Ministry of Finance
- *Carabinieri*
- Value added tax offices, Art. 51 Presidential Decree No 633/1972
- Provincial tax commissions
- Regional tax commissions

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7. Article 8 Duty to inform the Office

[...] 2. The institutions, bodies, offices and agencies and, unless *prevented by national law*, the *competent authorities of the Member States* shall, at the request of the Office or on their own initiative, transmit without delay to the Office any document or information they hold which relates to an ongoing investigation by the Office. [...]

3. The institutions, bodies, offices and agencies and, unless *prevented by national law*, the competent authorities of Member States shall transmit without delay to the Office, at the request of the Office or on their own initiative, any other information, documents or data considered pertinent which they hold, relating to the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

- 1 Art. 8 relates to the **transfer of information**. It is commonly known that without **information and channels** used to submit information, fewer investigations would be started and opened. This **obligation** is therefore surprisingly not regulated in an earlier article of the regulation, but in Art. 8. We focus on Art. 8 para 2 and 3 as they refer to national law. To illustrate the need for the transfer of information and the problems that come with it to establish an **effective (transmission) system**, it is worth to consider a statement:
- 2 Not every national possibility can be presented here, but examples can already provide help to find the right provisions:
- 3 For e.g. the management level of civil servants in Italy Art. 2 of a Directorial Decree dating 11 January 2022 (*Decreto direttoriale 11 gennaio 2022*) from the Minister of Economy stipulates that the Office for Disciplinary Proceedings (*Ufficio procedimenti disciplinari*) is competent in the area of internal investigations and allegations/suspicions against an Italian citizen working for the EU. Thus this Directorial Decree dating 11 January 2022 (*Decreto direttoriale 11 gennaio 2022*) will apply here, too. Art. 7 of this Decree restricts the flow of information in order to ensure data protection.
- 4 Article 23 Collaboration with the Guardia di Finanza. Decree of the President of the Republic dated 10/26/1972 n. 633 - In force since 15/04/2000/Modified by: Legislative Decree of 10/03/2000 n. 74

II. References to National law in the OLAF Regulation (Art. 9–17 OLAF Regulation)

As OLAF investigations can have elements of both national punitive, **administrative and EU administrative law**, and their findings may lead to criminal proceedings at the national level, fair proceedings that are compliant with procedural guarantees need to be installed and respected.⁵¹⁹ Hereby it is ensured that the acceptance of OLAF final reports as evidence in national courts is made stronger. Without adequate safeguards, courts may refuse to admit these reports, leading to inefficiencies and requiring national authorities to repeat investigative steps.⁵²⁰ *Bovend'Eerd* rightly points at the fact that there is a **two-folded situation** with regard to procedural guarantees: a) the rights established and codified by Art. 9 – *Ligeti* pointed out that these are *de facto* general **Europeanised defence rights** – must be respected in any OLAF investigation b) during on-the-spot checks OLAF must according to the “**yield-rule**” in Art. 3 para 3 respect as well national procedural rights (“in compliance with the rules and practices of the Member State concerned”).⁵²¹ Only in the absence of Europeanised defence rights, the national rights will apply and then then need to meet the requirements of the assimilation rule. *Bovend'Eerd*⁵²² discusses the use of “will-dependent” evidence, such as a witness statement offered to an OLAF investigator as an example of an evidence gathering action of OLAF during on-the-spot checks, which is a good example for the present discussion of the applicable laws, which will now follow:

1. Article 9 Procedural guarantees

[...] 3. As soon as an investigation reveals that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, that official, other servant, member of an institution or body, head of office or agency, or staff member shall be informed to that effect, provided that this does not prejudice the conduct of the investigation or of any investigative proceedings ***falling within the remit of a national judicial authority***.

4. [...] In duly justified cases where necessary to preserve the confidentiality of the investigation or an ongoing or future criminal investigation by the EPPO or a national 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. [...]

⁵¹⁹ See in-depth with further references only precisely *Ligeti* 2017, pp. 27 et seq.

⁵²⁰ *Bovend'Eerd* 2024, pp. 140 et seq.

⁵²¹ *Ibid*, p. 141.

⁵²² *Ibid*, p. 144: “Is this an EU power or can OLAF only exercise these powers on the basis of the principle of assimilation? For the person concerned, even if he has familiarised himself with the ‘yield rule’, this is problematic. He must be able to know what it is that Union law regulates to get a sense of the role left to be played by national law. How can a person know the scope of his private sphere or how interferences therewith may take place if he cannot know whether it is Union or national law that applies in a specific instance?”.

a) Art. 9 para 3 – remit of a national judicial authority

Article 1⁵²³ The bodies of the tax jurisdiction Legislative Decree 31 December 1992, n. 546

Provisions on the tax process

1. Tax jurisdiction is exercised by the commissions provincial tax authorities and by the regional tax commissions of referred to in Art. 1 of the decree of the President of the Republic 31 December 1992, n. 545.
2. The tax judges apply the rules of this decree and, as far as they are not disposed of and compatible with them, the norms of code of civil procedure.

b) Art. 9 para 4 – national judicial authorities

Art. 9 para 4 OLAF Reg. refers to the courts deciding in matters of all authorities in the area of revenue and expenditure:

- Council of State/*Consiglio di Stato*
- Regional administrative courts/*Tribunali Amministrativi Regionali (TAR)*

[Article 9a, 9b omitted]

⁵²³ **Art. 1. Gli organi della giurisdizione tributaria DECRETO LEGISLATIVO 31 dicembre 1992, n. 546 Disposizioni sul processo tributario**

1. La giurisdizione tributaria e' esercitata dalle commissioni tributarie provinciali e dalle commissioni tributarie regionali di cui all'Art. 1 del decreto del Presidente della Repubblica 31 dicembre 1992, n. 545.
2. I giudici tributari applicano le norme del presente decreto e, per quanto da esse non disposto e con esse compatibili, le norme del codice di procedura civile.

2. Article 10 Confidentiality and data protection

[...] 3. The institutions, bodies, offices or agencies concerned shall ensure that the confidentiality of the investigations conducted by the Office is respected, together with the legitimate rights of the persons concerned, and, where judicial proceedings have been initiated, that *all national rules applicable to such proceedings* have been adhered to.

Example of national rules applicable to judicial proceedings in the MS

1

- Codice del processo tributario
- Chapter II, Art. 9–14 Legislative Decree 18 May 2018, n. 51 Implementation of Directive (EU) 2016/680 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to the processing of personal data by the competent authorities for the purposes of prevention, investigation, verification and prosecution of crimes or execution of criminal sanctions, as well as the free circulation of such data and which repeals the Council Framework Decision 2008/977/JHA. (18G00080).

Further decrees and laws include: Legislative Decree 51/2018 (implementation of Directive 2016/680/EU the “Law Enforcement Data Protection Directive”) Arts. 9–14 regulate processing of personal data in the context of criminal proceedings. This decree ensures balance between effective investigation and protection of fundamental rights. Legislative Decree 231/2001 (liability of legal persons) is relevant when OLAF investigations indicate corporate criminal liability e.g., fraud against EU budget, corruption. Where OLAF findings concern irregularities with an administrative rather than criminal character, Italian administrative and tax litigation rules apply Codice del processo tributario (Legislative Decree No. 546/1992) governs tax litigation before provincial and regional tax courts and the admissibility and evidentiary use of OLAF reports in fiscal/administrative contexts.

2

Legislative Decree 196/2003 (Codice Privacy) as amended by Legislative Decree 101/2018 National implementation of the GDPR is relevant to OLAF’s transmission of reports containing personal data to judicial/administrative authorities.

3

Royal Decree 1214/1934 (Testo Unico delle Leggi sulla Corte dei Conti) and subsequent reforms governs judicial proceedings before the Court of Auditors in cases of damage to the financial interests of the State or the EU. OLAF reports may be used as evidence here too.

4

3. Article 11 Investigation report and action to be taken following investigations

1. On completion of an investigation by the Office, a report shall be drawn up, under the authority of the Director-General. That report shall give an account of the legal basis for the investigation, the procedural steps followed, the facts established and their preliminary classification in law, the estimated financial impact of the facts established, the respect of the procedural guarantees in accordance with Article 9 and the conclusions of the investigation.

[...] 2. In drawing up the reports and recommendations referred to in paragraph 1, account shall be taken of the relevant provisions of Union law and, in so far as it is applicable, *of the national law of the Member State concerned*.

Reports drawn up on the basis of the first subparagraph, together with all evidence in support and annexed thereto, shall constitute admissible evidence:

(a) *in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States;*

(b) *in criminal proceedings of the Member State* in which their use proves necessary in the *same way and under the same conditions* as administrative reports drawn up by *national administrative inspectors* and shall be subject to the *same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors* and shall have the same evidentiary value as such reports;

(c) in judicial proceedings before the CJEU and in administrative proceedings in the institutions, bodies, offices and agencies.

Member States shall notify to the Office *any rules of national law relevant* for the purposes of point (b) of the second subparagraph.

With regard to point (b) of the second subparagraph, Member States shall, upon request of the Office, send to the Office the *final decision of the national courts* once the *relevant judicial proceedings* have been finally *determined* and the final court decision has become *public*.

The power of the CJEU and national courts and competent bodies *in administrative and criminal proceedings to freely assess the evidential value* of the reports drawn up by the Office shall not be affected by this Regulation. [...]

3. Reports and recommendations drawn up following an external investigation and any relevant related documents shall be sent to the *competent authorities of the Member States* concerned in accordance with the rules relating to external investigations and, if necessary, to the institution, body, office or agency concerned. The competent authorities of the Member State concerned and, if applicable, the institution, body, office or agency shall take such action as the results of the external investigation warrant and shall report thereon to the Office within a time limit laid down in the recommendations accompanying the report and, in addition, at the request of the Office. Member States

may notify to the Office the *relevant national authorities competent* to deal with such reports, recommendations and documents.

4. Reports and recommendations drawn up following an internal investigation and any relevant related documents shall be sent to the institution, body, office or agency concerned. That institution, body, office or agency shall take such action, in particular of a disciplinary or legal nature, as the results of the internal investigation warrant, and shall report thereon to the Office, within a time-limit laid down in the recommendations accompanying the report, and, in addition, at the request of the Office.

5. Where the report drawn up following an internal investigation reveals the existence of facts which could give rise to criminal proceedings, that information, together with the recommendations, shall be transmitted without delay to the judicial authorities of the Member State concerned, without prejudice to Articles 12c and 12d.

At the request of the Office, the *competent authorities of the Member States* concerned shall, within a time limit laid down in the recommendations, send to the Office information on the action taken, if any, and the reasons for non-implementation of the recommendations, where applicable, following the transmission by the Office of any information in accordance with the first subparagraph of this paragraph.

7. Without prejudice to paragraph 4, if, on completion of an investigation, no evidence has been found against the person concerned, the Director-General shall close the investigation regarding that person and inform that person within 10 working days.

8. Where an informant provided the Office with information which led to the investigation, the Office shall notify that informant that the investigation has been closed, unless it considers that this information is such as to prejudice the legitimate interests of the person concerned and the effectiveness of the investigation and of the action to be taken subsequent thereto, or any confidentiality requirements.

a) References to national law

Sources & national sections 6: Overview for Italy – Art. 11 OLAF Regulation

Para 2 (a)	<p>Article 58 Decree of the President of the Republic dated 10/26/1972 n. 633 -</p> <p>Application of sanctions.</p> <p>In case of violation of the obligations established by this decree, the value added tax office proceeds with the imposition of the pecuniary penalties and the surcharges provided for in the third title.</p> <p>For violations that give rise to rectification or assessment of the tax, the imposition of sanctions is communicated to the taxpayer with the same notice of adjustment or assessment.</p>	1
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	<p>For violations that do not give rise to rectification or assessment of the tax, the office can provide at any time, with separate notices to be notified in accordance with the first paragraph of Art. 56, by December of the fifth year following the one in which the violation took place.</p> <p>The pecuniary penalty cannot be imposed if a sum equal to one sixth of the maximum penalty has been paid to the office within thirty days of the date of the report of the violation;</p> <p>the pecuniary penalty imposed at the same time as the finding of the violation carried out at the office will be considered ineffective if the payment is made within the terms and in the manner mentioned above.</p> <p>5. (deleted).</p>
<p>Para 2 (b)</p>	<p>The rules on national administrative reports have been explored with examples above, see → Art. 3 OLAF Regulation.</p> <p>The EU Commission might assess whether it can join a national criminal proceeding following an OLAF Report or Recommendation. This was stressed by a Report of the European Council in 2011:</p> <p>“When the European Commission sues for damages in a criminal court in relation to offences affecting the financial interests of the European Union, the assessment in such proceedings is done by the European Commission Legal Service, subject to an Inter-Service Consultation, during which OLAF can express its opinion. This has occurred on many occasions, mainly in the customs sector as well as in relation to direct expenses and aid to third countries. In Italy similar cases have been recorded in the customs sector (criminal proceedings based in Catania and Verona concerning illicit trafficking in bananas) or within the framework of investigations into cigarette smuggling activities in Montenegro (criminal proceeding instituted in Bari and pending appeal) as well as in relation to aid to third countries as a result of the investigations conducted into some Italian NGOs. At present, the Commission is assessing its position within the framework of a criminal proceeding based in Milan concerning direct expenses. In theory, the above procedure would be possible in other sectors, too; however, with regard to structural funds, for instance, the Member State is expected to assume that role, this being a case of so-called shared management of the European Union budget. This procedure applies in any European Union Member State.”⁵²⁴</p>

⁵²⁴ See European Council, Evaluation Report on the fifth round of Mutual Evaluations "Financial Crime And Financial Investigations" Report on Italy, Brussels, 2011, p. 69.

	<p>And even OLAF officials can participate within a criminal investigation before an Italian criminal court.</p> <p>See above → h) Para 5: National Procedures and national modalities for taking investigative measures. See above → h) Para 5: National Procedures and national modalities for taking investigative measures.</p>
Para 2 (c)	<p>The competent authorities in this area are the National Revenue Authority, the National Directorates within the Ministries competent for Funds and Direct Expenditure, the National Tax Administration (especially the national VAT offices), the Structural Funds Authorities cooperating with the Ministries, which supervise the spending of EU funds and the Court of Auditors. The national police might be concerned in the area of spending in this area.</p>

Source: The authors.

b) National authority, para 3

A very important or the most important authority under Art. 11 para 3 OLAF Reg. in Italy is the Customs and Monopoly Authority, ADM: 2

- ADM Agenzia delle Dogane e dei Monopoli Piazza Mastai, 12 00153 Roma.

But there are further authorities that can receive recommendations by OLAF. The following authorities are partly the same that conduct external, administrative investigations for OLAF by virtue of Art. 3 OLAF Reg.:

- DAEC, Direzioni antifraud e controlli
- Ufficio territoriale
 - ADM – Italian Customs and Monopoly Agency/*Agenzia delle Dogane e dei Monopoli*
 - CdC -Italian Court of Auditors/*Corte de Conti*
 - Ae – Revenue Agency/*Agenzia Delle Entrate*
 - ARO – The National Asset Recovery Office/*l’Ufficiol’Ufficio nazionale per il recupero dei beni*

and all authorities in the area of expenditure: 4

- ACT – Italian Agency for Territorial Cohesion/*Agenzia per la Coesione Territoriale*
- AgEA – Agency for Agricultural Grants/*Agenzia per le Erogazioni in Agricoltura*
- ARO – The National Asset Recovery Office/*l’Ufficiol’Ufficio nazionale per il recupero dei beni*

- 5 In both areas the
 - ANAC – National Anti-corruption Unit/Authority/Autorità Nazionale Anticorruzione needs to be consulted in suspected cases of corruption and subsequent administrative penalties.
 - Office for Disciplinary Proceedings (Ufficio procedimenti disciplinari) in case Italian national officials/civil servants are involved.
- 6 The EPPO needs to be informed promptly, too.

4. Article 12 Exchange of information

Between the Office and the competent authorities of the Member States

1. Without prejudice to Articles 10 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may transmit to the competent authorities of the Member States concerned information obtained in the course of external investigations in due time to enable them to take appropriate action *in accordance with their national law*. It may also transmit such information to the institution, body, office or agency concerned.

2. Without prejudice to Articles 10 and 11, the Director-General shall transmit to the *judicial authorities of the Member State concerned* information obtained by the Office, in the course of internal investigations, concerning facts which fall within the *jurisdiction of a national judicial authority*. [...]

3. The *competent authorities of the Member State concerned* shall, unless *prevented by national law*, inform the Office without delay, and in any event within 12 months of receipt of the information transmitted to them in accordance with this Article, of the action taken on the basis of that information.

In accordance with Article 4 and without prejudice to Article 10, the Director-General shall also transmit to the institution, body, office or agency concerned the information referred to in the first subparagraph of this paragraph, including the identity of the person concerned, a summary of the facts established, their preliminary classification in law and the estimated impact on the financial interests of the Union.

Article 9(4) shall apply.

4. The Office may *provide evidence* in proceedings before national courts and tribunals *in conformity with national law* and the Staff Regulations. [...]

5. The Office may provide relevant information to the Eurofisc network established by Regulation (EU) No 904/2010. Eurofisc working field coordinators may transmit relevant information from the Eurofisc network to the Office under the conditions laid down in Regulation (EU) No 904/2010.

Irregularities are reported via the Irregularities Management System and the competent bodies can be detected via the analysis of the different areas of law or with the help of the national AFCOS.⁵²⁵

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⁵²⁵ See further Dipartimento per la politiche europee, Comitato per la lotta contro le frodi nei confronti dell'Unione europea, Linee guida sulle modalità di comunicazione alla Commissione europea delle Irregolarità e Frodi a danno del bilancio europeo [Guidelines on how to notify the European Commission of irregularities and fraud to the detriment of the European budget], Rome, 2013, 2020.

a) Art. 12 para 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law)

7 Competent authorities

- Public Prosecutor (*Procuratore della Repubblica*)
 - Office of the Public Prosecutor attached to the Court of first instance [district-only] (Regional), e.g. Bologna (*Procura della Repubblica presso il Tribunale di Bologna*)
 - National Anti-Mafia Directorate
 - Anti-Terrorism Directorate
- General Prosecutor's Office at the Court of Appeal (Regional), e.g. of Bologna
- Judicial Police ("External" control bodies)
- Technical advisors for the public prosecutor
- Tax Police (Guarda di Finanza)
- Pre-trial investigating judge
- Carabinieri
- Agency for territorial cohesion
- Judicial authority ("External" control bodies)
- Court of Auditors ("External" control bodies)
- Investigators of the Ministry of Agriculture
 - Carabinieri Agricultural Policies Command (*Comando Carabinieri Politiche Agricole*)
- Provincial Inspectorate of Agriculture (Ispettorato Provinciale dell'Agricoltura – IPA)
- Financial Intelligence Unit
- Customs and Monopoly Agency (Agenzia delle Dogane, Monopoli di Stato)

- Revenue Agency (Agenzia delle Entrate) Audit Authority
- Certifying Authority
- Managing Authorities
- Directorate-General for Maritime Fisheries and Aquaculture (PEMAC - Direzione generale per la pesca marittima e l'acquacoltura *acquacoltura*)
- Value added tax offices, Art. 51 Presidential Decree No 633/1972
- Provincial tax commissions
- Regional tax commissions

Appropriate action acc. to national law 8

- National follow-up acc. to the Administrative Procedure Act.
- National follow-up acc. to the special Administrative laws e.g.eg Administrative Procedure Act, Code of Tax Process, Presidential Decree No 43 of Customs Legislation

b) Art. 12 para 2 OLAF Regulation (judicial authorities of the Member State concerned)**Which are these national authorities?** 9**For all offences:**

- Public Prosecutor (*Procuratore della Repubblica*)
 - Office of the Public Prosecutor attached to the Court of first instance [district-only] (Regional), e.g. Bologna (*Procura della Repubblica presso il Tribunale di Bologna*)
 - National Anti-Mafia Directorate
 - Anti-Terrorism Directorate
- General Prosecutor's Office at the Court of Appeal (Regional), e.g. of Bologna
- Judicial Police ("External" control bodies)
- Technical advisors for the public prosecutor
- Tax Police (Guarda di Finanza)
- Pre-trial investigating judge
- Carabinieri
- Agency for territorial cohesion
- Judicial authority ("External" control bodies)
- Court of Auditors ("External" control bodies)
- Investigators of the Ministry of Agriculture
 - Carabinieri Agricultural Policies Command (*Comando Carabinieri Politiche Agricole*)
- Provincial Inspectorate of Agriculture (Ispettorato Provinciale dell'Agricoltura – IPA)
- Financial Intelligence Unit
- Customs and Monopoly Agency (*Agenzia delle Dogane, Monopoli di Stato*)

Especially for corruption offences: 10

- National Anti-Corruption Authority (Autorità Nazionale Anticorruzione ANAC)
- General Prosecutor at the Supreme Court
- Minister of Justice
- Disciplinary section of the High Council for the Judiciary responsible for disciplinary action against judges and public prosecutors ("This disciplinary section

acts as a court of first instance and all its decisions can be appealed to the Joint Sections of the Supreme Court”⁵²⁶)

- Head of corruption prevention and transparency at the Administrative Judiciary (*responsabile della prevenzione della corruzione e della trasparenza (RPCT)*)⁵²⁷

c) Art. 12 para 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned)

- 11 These are the authorities, which were presented under a) and b) above. They are obliged to fulfil the time-limit by virtue of Art. 12 para 3 OLAF Regulation.

Prevention by national law

- 12 The right to withhold information (for a certain time) may result from provisions, which ensure the secrecy of an action under national law.

d) Art. 12 para 4 OLAF Regulation (Providing evidence in court proceedings before national courts and tribunals in conformity with national law)

- 13 The Code of Administrative Court Procedure (*Codice del processo amministrativo*) will apply if providing evidence in court proceedings before national administrative courts and tribunals. And the Criminal Procedure Code (*Codice di procedura penale*) might apply if providing evidence in national court proceedings before criminal courts and tribunals.

2

<p style="text-align: center;">Code of Administrative Process⁵²⁸ Title III Means of proof and preliminary activities Chapter I Means of proof</p> <p>Article 63 Means of proof</p> <p>1. Without prejudice to the burden of proof on them, the judge may ask the parties, even ex officio, for clarifications or documents.⁵²⁹</p>
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⁵²⁶ Website of the Ministero della Giustizia, https://www.giustizia.it/giustizia/it/mg_2_1_4_2_2.wp#.

⁵²⁷ <https://www.giustizia-amministrativa.it/it/web/guest/responsabile-prevenzione-corruzione-e-trasparenza>. Accessed 31 December 2025.

⁵²⁸ Codice del processo amministrativo, Decreto legislativo, 02/07/2010 n° 104, G.U. 07/07/2010

⁵²⁹ **Titolo III**

Mezzi di prova e attività istruttoria

Capo I

Mezzi di prova

Art. 63. Codice del processo amministrativo Mezzi di prova

1. Fermo restando l'onere della prova a loro carico, il giudice può chiedere alle parti anche d'ufficio chiarimenti o documenti.

2. The judge, even ex officio, may also order third parties to exhibit documents or anything else he deems necessary in court, according to the provisions of articles 210 and following of the code of civil procedure; it may also order the inspection pursuant to article 118 of the same code.
3. At the request of a party, the judge can admit witness evidence, which is always taken in written form pursuant to the code of civil procedure.
4. If the judge deems it necessary to ascertain facts or acquire assessments that require particular technical skills, he can order the execution of a verification or, if indispensable, he can arrange for technical advice.
5. The judge may also order the assumption of other means of proof provided for by the code of civil procedure, excluding formal interrogation and taking the oath.

Chapter II

Admission and taking of tests

Article 64⁵³⁰ Availability, burden and evaluation of the test

1. It is the responsibility of the parties to provide evidence that is available to them regarding the facts underlying the claims and objections.
2. Except in the cases provided for by law, the judge must base the decision on the evidence proposed by the parties as well as the facts not specifically contested by the established parties.
3. The administrative judge may order, even ex officio, the acquisition of information and documents useful for deciding that they are available to the public administration.
4. The judge must evaluate the evidence according to his prudent judgment and may derive evidence from the behaviour/behavior of the parties during the trial.

2. Il giudice, anche d'ufficio, può ordinare anche a terzi di esibire in giudizio i documenti o quanto altro ritenga necessario, secondo il disposto degli articoli 210 e seguenti del codice di procedura civile; può altresì disporre l'ispezione ai sensi dell'articolo 118 dello stesso codice.

3. Su istanza di parte il giudice può ammettere la prova testimoniale, che è sempre assunta in forma scritta ai sensi del codice di procedura civile.

4. Qualora reputi necessario l'accertamento di fatti o l'acquisizione di valutazioni che richiedono particolari competenze tecniche, il giudice può ordinare l'esecuzione di una verifica ovvero, se indispensabile, può disporre una consulenza tecnica.

5. Il giudice può disporre anche l'assunzione degli altri mezzi di prova previsti dal codice di procedura civile, esclusi l'interrogatorio formale e il giuramento

⁵³⁰ Capo II

Ammissione e assunzione delle prove

Art. 64. Codice del processo amministrativo Disponibilità, onere e valutazione della prova

1. Spetta alle parti l'onere di fornire gli elementi di prova che siano nella loro disponibilità riguardanti i fatti posti a fondamento delle domande e delle eccezioni.

2. Salvi i casi previsti dalla legge, il giudice deve porre a fondamento della decisione le prove proposte dalle parti nonché i fatti non specificatamente contestati dalle parti costituite.

3. Il giudice amministrativo può disporre, anche d'ufficio, l'acquisizione di informazioni e documenti utili ai fini del decidere che siano nella disponibilità della pubblica amministrazione.

4. Il giudice deve valutare le prove secondo il suo prudente apprezzamento e può desumere argomenti di prova dal comportamento tenuto dalle parti nel corso del processo.

Code of Criminal Procedure
THIRD BOOK
TITLE I

General provisions

Article 187 CPC⁵³¹ Object of the test

1. The facts relating to the imputation, the punishment and the determination of the penalty or security measure are the subject of evidence.
2. The facts on which the application of procedural rules depend are also subject to proof.
3. If there is a civil action, the facts relating to the civil liability deriving from the crime are also subject to proof.

Article 188 CPC⁵³² Moral freedom of the person in taking proof

1. Methods or techniques capable of affecting the freedom of self-determination or of altering the ability to remember and evaluate facts may not be used, even with the consent of the person concerned.

Article 189 CPC⁵³³ Tests not regulated by law

1. When evidence that is not regulated by the law is required, the judge can take it if it is suitable for ascertaining the facts and does not affect the moral freedom of the person. The judge provides for admission, after hearing the parties on the methods of taking the evidence.

⁵³¹ **PARTE PRIMA**

LIBRO TERZO

PROVE

TITOLO I

Disposizioni generali

Art. 187. Oggetto della prova.

1. Sono oggetto di prova i fatti che si riferiscono all'imputazione, alla punibilità e alla determinazione della pena o della misura di sicurezza.
2. Sono altresì oggetto di prova i fatti dai quali dipende l'applicazione di norme processuali.
3. Se vi è costituzione di parte civile, sono inoltre oggetto di prova i fatti inerenti alla responsabilità civile derivante dal reato.

⁵³² **Art. 188. Libertà morale della persona nell'assunzione della prova.**

1. Non possono essere utilizzati, neppure con il consenso della persona interessata, metodi o tecniche idonei a influire sulla libertà di autodeterminazione o ad alterare la capacità di ricordare e di valutare i fatti.

⁵³³ **Art. 189. Prove non disciplinate dalla legge.**

1. Quando è richiesta una prova non disciplinata dalla legge, il giudice può assumerla se essa risulta idonea ad assicurare l'accertamento dei fatti e non pregiudica la libertà morale della persona. Il giudice provvede all'ammissione, sentite le parti sulle modalità di assunzione della prova.

Article 190 CPC⁵³⁴ Right to proof

1. The tests are admitted at the request of a party. The judge provides without delay with an order excluding the evidence prohibited by law and those that are manifestly superfluous or irrelevant.
2. The law establishes the cases in which evidence is admitted ex officio.
3. Provisions on the admission of evidence can be revoked after hearing the parties in cross-examination.

Article 190-bis. CPC⁵³⁵ Test requirements in special cases

1. In proceedings for any of the crimes indicated in article 51, paragraph 3-bis, when the examination of a witness or of one of the persons indicated in article 210 is required and these have already made declarations in the event of an accident evidential or in hearing in the cross-examination with the person against whom the same declarations will be used or declarations whose minutes have been acquired pursuant to article 238, the examination is admitted only if it concerns facts or circumstances other than those subject of the previous declarations or if the judge or one of the parties deem it necessary on the basis of specific needs.

1-bis. The same provision applies when proceeding for one of the offenses provided for in articles 600-bis, first paragraph, 600-ter, 600-quater, even if relating to pornographic material referred to in article 600-quater.1, 600-quinquies, 609-bis, 609-ter, 609-quater, 609-quinquies and 609-octies of the Criminal Code, if the requested examination concerns a witness under the age of eighteen and, in any case, when the witness examination requested concerns an injured person in a particularly vulnerable condition

⁵³⁴ **Art. 190. Diritto alla prova.**

1. Le prove sono ammesse a richiesta di parte. Il giudice provvede senza ritardo con ordinanza escludendo le prove vietate dalla legge e quelle che manifestamente sono superflue o irrilevanti.
2. La legge stabilisce i casi in cui le prove sono ammesse di ufficio.
3. I provvedimenti sull'ammissione della prova possono essere revocati sentite le parti in contraddittorio.

⁵³⁵ **Art. 190-bis. Requisiti della prova in casi particolari.**

1. Nei procedimenti per taluno dei delitti indicati nell'articolo 51, comma 3-bis, quando è richiesto l'esame di un testimone o di una delle persone indicate nell'articolo 210 e queste hanno già reso dichiarazioni in sede di incidente probatorio o in dibattimento nel contraddittorio con la persona nei cui confronti le dichiarazioni medesime saranno utilizzate ovvero dichiarazioni i cui verbali sono stati acquisiti a norma dell'articolo 238, l'esame è ammesso solo se riguarda fatti o circostanze diversi da quelli oggetto delle precedenti dichiarazioni ovvero se il giudice o taluna delle parti lo ritengono necessario sulla base di specifiche esigenze.

1-bis. La stessa disposizione si applica quando si procede per uno dei reati previsti dagli articoli 600-bis, primo comma, 600-ter, 600-quater, anche se relativi al materiale pornografico di cui all'articolo 600-quater.1, 600-quinquies, 609-bis, 609-ter, 609-quater, 609-quinquies e 609-octies del codice penale, se l'esame richiesto riguarda un testimone minore degli anni diciotto e, in ogni caso, quando l'esame testimoniale richiesto riguarda una persona offesa in condizione di particolare vulnerabilità.

Article 191 CPC⁵³⁶ Evidence illegitimately acquired

1. Evidence acquired in violation of the prohibitions established by law cannot be used.
2. The unusability is also detectable ex officio in every state and degree of the procedure.
- 2-bis. The statements or information obtained through the crime of torture cannot in any case be used, except against the persons accused of this crime and for the sole purpose of proving their criminal responsibility.

Article 192 CPC⁵³⁷ Evidence evaluation

1. The judge evaluates the test by taking into account the results obtained and the criteria adopted in the motivation.
2. The existence of a fact cannot be deduced from indications unless these are serious, precise and concordant.
3. The statements made by the co-accused of the same crime or by a person accused in a related proceeding pursuant to Article 12 are assessed together with the other evidence confirming their reliability.
4. The provision of paragraph 3 also applies to declarations made by a person accused of an offense connected to the one for which one is proceeding, in the case provided for by article 371 paragraph 2 letter b).

Article 193 CPC⁵³⁸ Proof Limits Established by Civil Laws

1. In the criminal trial, the limits of proof established by civil laws are not observed, with the exception of those concerning the status of family and citizenship

⁵³⁶ **Art. 191. Prove illegittimamente acquisite.**

1. Le prove acquisite in violazione dei divieti stabiliti dalla legge non possono essere utilizzate.
2. L'inutilizzabilità è rilevabile anche di ufficio in ogni stato e grado del procedimento.
- 2-bis. Le dichiarazioni o le informazioni ottenute mediante il delitto di tortura non sono comunque utilizzabili, salvo che contro le persone accusate di tale delitto e al solo fine di provarne la responsabilità penale.

⁵³⁷ **Art. 192. Valutazione della prova.**

1. Il giudice valuta la prova dando conto nella motivazione dei risultati acquisiti e dei criteri adottati.
2. L'esistenza di un fatto non può essere desunta da indizi a meno che questi siano gravi, precisi e concordanti.
3. Le dichiarazioni rese dal coimputato del medesimo reato o da persona imputata in un procedimento connesso a norma dell'articolo 12 sono valutate unitamente agli altri elementi di prova che ne confermano l'attendibilità.
4. La disposizione del comma 3 si applica anche alle dichiarazioni rese da persona imputata di un reato collegato a quello per cui si procede, nel caso previsto dall'articolo 371 comma 2 lettera b).

⁵³⁸ **Art. 193. Limiti di prova stabiliti dalle leggi civili.**

1. Nel processo penale non si osservano i limiti di prova stabiliti dalle leggi civili, eccettuati quelli che riguardano lo stato di famiglia e di cittadinanza.

5. Article 12a Anti-fraud coordination services

1. Each Member State shall, for the purposes of this Regulation, designate a service (the ‘anti-fraud coordination service’) to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, *in accordance with national law*, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation.
2. Upon request of the Office, before a decision has been taken as to whether or not to open an investigation, as well as during or after an investigation, the anti-fraud coordination services shall provide or coordinate the necessary assistance for the Office to carry out its tasks effectively. Such assistance shall include in particular assistance from the competent authorities of Member States provided in accordance with Article 3(5) and (6), Article 7(3) and Article 8(2) and (3).
3. The anti-fraud coordination services may provide assistance to the Office upon request so that the Office may conduct coordination activities in accordance with Article 12b, including, where appropriate, horizontal cooperation and exchange of information between anti-fraud coordination services.

The Italian AFCOS must be distinguished from various political institutions and special bodies in Italy e.g. “The Italian Financial Police Anti-Fraud Unit”⁵³⁹, which are as well competent for the fight against fraud detrimental to the EU budget but have not the same tasks as a national AFCOS. They are rather informed by the AFCOS and start to cooperate with OLAF afterwards.⁵⁴⁰ **1**

The Italian AFCOS is called the “Italian Anti-fraud Committee” – Countering misuse and abuse of the EU budget - (*Comitato per la lotta contro le frodi nei confronti dell’Unione dell’Unione Europea*), which is part of the Government structure.⁵⁴¹ **2**

Nota bene: “The Committee’s action is supported by a technical secretariat composed by officers of the Financial Police Anti-fraud Unit, operating at the Department for European Policies”. **3**

⁵³⁹ A special Unit of the Italian Financial Police operates – according to Law No 234 of December 24th 2012, Article No 54 – at the Department for European Policies to counter fraud against the European Union’s budget. Head: Gen. C.A. Rosario Lorusso, e-mail: nucleorepressionefrodigdf@palazzochigi.it .

⁵⁴⁰ See Tatta 2021, pp. 64 et seq.

⁵⁴¹ Il Comitato per la lotta contro le frodi nei confronti dell’Unione Europea (COLAF) opera - ai sensi dell’Art. 3 del D.P.R. 14 maggio 2007, n. 91 e dell’Art. 54 legge 24 dicembre 2012, n. 234 - presso il Dipartimento Politiche Europee.

4 The AFCOS Presentation by visualization:

➤ **National Anti-fraud coordination Service**

Organization Level: Ministry of Finance

Guardia di Finanza, Division Specialised in Countering EU frauds at the Department of European Policies

5 The Italian Anti-Fraud Committee consists of the following heads and chiefs:

The Head of Department for European Policies

The Chief of the Financial Police Anti-fraud Unit

The Directors General of the Department for European Policies


The Directors General of the Ministries responsible for the fight against tax and agricultural fraud and the misuse of European funds, which are appointed by the Chair

The Members appointed by the national Conference of Regions, Cities and Local Authorities

Source: Italian Ministry of Justice.

6 The *Guardia di Finanza* informed by the Italian AFCOS had many success stories with OLAF in the past. One of them can be presented here in a Case Study.

7 *Case Study/Case Facts 3: Operation Paper Castle*

	Case Study: Operation Paper Castle
<p>“On 16 February 2018, OLAF reported a successful strike against an intricate fraud scheme that siphoned off more than €1.4 million from the EU’s Research and Innovation fund. An Italian-led consortium set up the fraud scheme, with alleged partners in France, Romania, and the UK. The funds were initially received in order to develop two hovercraft prototypes for nautical emergency purposes. However,</p>	

OLAF investigators, in close cooperation with the Guardia di Finanza in Italy, discovered that the Italian beneficiaries had neither the structural nor the economic conditions to carry out the project. Instead, they used artificial accountings to siphon off money, claiming false expenses.

The investigation was named ‘Operation Paper Castle’ because part of the EU money received was used to redeem a mortgage on a castle face with foreclosure. In addition, the UK partner company only existed on paper and was owned by the Italian partner.

As a result of the investigations, OLAF send two judicial recommendations, one to the Public Prosecutor’s Office of Genoa and another to the City of London Police in the UK as well as a financial recommendation to the Directorate-General for Research and Innovation of the European Commission. The project leader is facing charges of embezzlement and fraud against the EU, false accounting, fraudulent bankruptcy, and fraudulent statements in Italy.

OLAF stressed that the operation is the result of a close and constant cooperation with law enforcement authorities in the different EU Member States. It also showed that OLAF plays a decisive role in fraud cases of a transnational nature, as it was able to map out and put an end to the fraudulent activities.”⁵⁴²

The case, only one amongst many alike, shows once again that structural funds are under hard attack in Italy and a close operation with the national AFCOS is highly important in order to achieve results in ongoing investigations that need external inspections (see above Art. 3) etc. **8**

[Article 12b–12d omitted]

⁵⁴² Wahl 2018.

6. Article 12e The Office's support to the EPPO

1. In the course of an investigation by the EPPO, and at the request of the EPPO in accordance with Article 101(3) of Regulation (EU) 2017/1939, the Office shall, in accordance with its mandate, support or complement the EPPO's activity, in particular by:
 - (a) providing information, analyses (including forensic analyses), expertise and operational support;
 - (b) facilitating coordination of specific actions of *the competent national administrative authorities* and bodies of the Union; [...]
 - (c) conducting administrative investigations. When providing support to the EPPO, the Office shall refrain from performing acts or measures which could jeopardise the investigation or prosecution.
2. A request referred to in paragraph 1 shall be transmitted in writing and shall specify at least:
 - (a) the information relating to the EPPO investigation in so far as relevant for the purpose of the request;
 - (b) the measures which the EPPO requests the Office to perform;
 - (c) where appropriate, the envisaged timing for carrying out the request. Where necessary, the Office may request additional information.
3. In order to protect the admissibility of evidence as well as fundamental rights and procedural guarantees, where the Office performs, within its mandate, supporting measures requested by the EPPO pursuant to this Article, the EPPO and the Office, acting in close cooperation, shall ensure that the applicable procedural safeguards of Chapter VI of Regulation (EU) 2017/1939 are observed.

Which are these national authorities?

- *Guardia di Finanza*
- Customs authority/*Dogane*
- Investigators of the Ministry of Agriculture
 - *Comando Carabinieri Politiche Agricole*
 - Agricultural authorities
- *Carabinieri*
- Value added tax offices, Art. 51 Presidential Decree No 633/1972
- Tax commissions

[Article 12f–g omitted]

7. Article 13 Cooperation of the Office with Eurojust and Europol

1. Within its mandate to protect the financial interests of the Union, the Office shall cooperate, as appropriate, with the European Union Agency for Criminal Justice Cooperation (Eurojust) and with the European Union Agency for Law Enforcement Cooperation (Europol). Where necessary in order to facilitate that cooperation, the Office shall agree with Eurojust and Europol on administrative arrangements. Such working arrangements may concern exchange of operational, strategic or technical information, including personal data and classified information and, on request, progress reports.

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. [...]

2. The competent authorities of the Member States concerned shall be informed, in a timely manner, by the Office in cases where information provided by them is transmitted by the Office to Eurojust or Europol.

National investigating and prosecuting authorities:

- Public Prosecutor (*Procuratore della Repubblica*)
- Office of the Public Prosecutor attached to the Court of first instance [district-only] (Regional), e.g. Bologna (*Procura della Repubblica presso il Tribunale di Bologna*)
- National Anti-Mafia Directorate
- Anti-Terrorism Directorate
- General Prosecutor's Office at the Court of Appeal (Regional), e.g. of Bologna
- Judicial Police ("External" control bodies)
- Technical advisors for the public prosecutor
- Tax Police (Guardia di Finanza) – special agency conducting internal investigations into tax offences + in economic and financial areas
- Pre-trial investigating judge
- Carabinieri
- Agency for territorial cohesion
- Judicial authority ("External" control bodies)
- Court of Auditors ("External" control bodies)

1

2 General administrative authorities:

- Revenue Agency (*Agenzia delle Entrate*) (solely administrative functions⁵⁴³)
- Audit Authority
- Certifying Authority
- Managing Authorities
- Provincial tax commissions
- Regional tax commissions

3 In customs matters:

- Tax Police (*Guardia di Finanza*) – special agency conducting internal investigations into tax offences + in economic and financial areas⁵⁴⁴
- Customs and Monopoly Agency (*Agenzia delle Dogane, Monopoli di Stato*)

4 In agricultural, fisheries matters:

- Directorate-General for Maritime Fisheries and Aquaculture (*PEMAC - Direzione generale per la pesca marittima e l'acquacoltura*)
- Provincial Inspectorate of Agriculture (*Ispettorato Provinciale dell'Agricoltura – IPA*)
- Investigators of the Ministry of Agriculture
- Carabinieri Agricultural Policies Command (*Comando Carabinieri Politiche Agricole*)

5 In forest matters:

- Ministry of Agricultural, Food and Forestry Policies, (Ministero delle Politiche Agricole, Alimentari e Forestali; MiPAAF)
- Provincial Inspectorate of Agriculture (*Ispettorato Provinciale dell'Agricoltura – IPA*)
- Investigators of the Ministry of Agriculture
- Carabinieri Agricultural Policies Command (*Comando Carabinieri Politiche Agricole*)

6 In financial fraud matters:

- Financial Intelligence Unit (“exchange of information and [providing of] analytical support, on the suspension of suspicious transactions, on data protection and mutual training initiatives”⁵⁴⁵)

[Article 14–16 omitted]

⁵⁴³ Nicollicchia 2017, p. 15.

⁵⁴⁴ Nicollicchia 2017, p. 10.

⁵⁴⁵ EPPO News of 8 June 2022, <https://www.eppo.europa.eu/en/news/eppo-and-italian-financial-intelligence-unit-strengthen-cooperation>. Accessed 30 June 2025.

8. Article 17 Director-General

[...] 4. The Director-General shall report regularly, and at least annually, to the European Parliament, to the Council, to the Commission and to the Court of Auditors on the findings of investigations carried out by the Office, the action taken and the problems encountered, whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and of informants, and, where appropriate, *national law applicable to judicial proceedings*. Those reports shall also include an assessment of the actions taken by the *competent authorities of Member States* and the institutions, bodies, offices and agencies, following reports and recommendations drawn up by the Office.

7. The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating, inter alia, to the respect of procedural guarantees and fundamental rights of the persons concerned and *of the national law of the Member States concerned*, with particular reference to Article 11(2). The legality check shall be carried out by Office staff who are experts in law and investigative procedures. Their opinion shall be annexed to the final investigation report.

Article 17 contains provisions regarding the office's reporting obligations and the safeguarding of procedural guarantees in the course of its investigations. Paras 4 and 7, in particular, – this is the *telos* – underline OLAF's efforts to balance effective investigative action with the protection of fundamental rights. **1**

The Supervisory Committee noted that OLAF's country mini-profiles provided some information on national laws but were insufficient for compensating occasional expertise issues.⁵⁴⁶ They also reviewed **OLAF's legality check procedures**, recognizing the importance of expertise in all EU Member States' legal systems. Good relations between investigators and reviewers were seen to positively impact the quality of checks and reviews. OLAF's legality check ensures compliance with legal rules and addresses any breaches swiftly. The check focuses on procedural aspects and may lead to modifications or abandonment of actions if it fails. The committee emphasized the importance of compliance with rights and procedural rules in promoting the rights of those affected. **2**

Article 17 para 4 specifies that the OLAF Director-General is required to **report regularly and at least annually**, to major EU IBOA. The reports should cover the findings of OLAF's investigations, the actions taken and any problems encountered during them. Importantly, these reports must respect the confidentiality of investigations and the legitimate rights of individuals involved, including informants. The provision also requires OLAF to consider national laws applicable to judicial proceedings. **3**

⁵⁴⁶ Supervisory Committee, Opinion No 2/2015, Legality check and review in OLAF, pp. 6 et seq.

- 4 Next, Article 17 para 7 further emphasizes procedural guarantees and compliance with fundamental rights. It mandates the establishment of an internal advisory and control procedure, including a legality check, which OLAF did in the past.
- 5 The **legality check** should be carried out by OLAF staff who are experts in law and investigative procedures and focus on the procedural safeguards. This internal control mechanism is relevant for ensuring that national laws are respected. The opinion resulting from this check should then be annexed to the final investigation report, thereby providing transparency and accountability for the decisions made throughout the investigative process.
- 6 As noted in an article by *Mavromati* and *Riochet* it is recalled that this check was introduced as a new internal advisory and control procedure in the past.⁵⁴⁷ This change, unlike its predecessor (Regulation 1073/1999), was designed to **include an internal legality** check that assesses, among other things, the respect for procedural guarantees and the fundamental rights of individuals under investigation. This internal process is vital for ensuring that OLAF's actions remain compliant with both EU and national standards, e.g. for upholding the rule of law and protecting the rights of individuals. Moreover, the importance of these procedural safeguards has been by the ECL C-787/22, which related to the respect for the rights of defence and procedural guarantees during OLAF's investigations were at the center of the dispute.⁵⁴⁸ It was reiterated the need for OLAF to operate in a manner that respects fundamental rights, including the right to be heard and the right to avoid self-incrimination.

a) National law applicable to judicial proceedings

- 7 **Applicable national law:**
National law applicable to judicial proceedings: Code of Administrative Process (*Codice del processo amministrativo*), Criminal Procedure Code (*Codice di procedura penale*)
- 8 Examples from the Code of Administrative Process.
 - Administrative jurisdiction, Art. 7–12
 - Jurisdiction, Art. 13–16
 - Actions and questions, Art. 27, 28
 - Actions of knowledge (Action for annulment, Art. 29; Conviction action, Art. 30; Action against silence and declaration of nullity, Art. 31)
 - Jurisdictional rulings, Art. 33–37
 - First Degree Administrative Process, Art. 40–90

⁵⁴⁷ Mavromati and Riochet 2024, eucrim, pre-print.

⁵⁴⁸ ECJ, Case C-787/22 P, *Sistem ecologica production v EU Commission*, Judgment of 30 November 2023, ECLI:EU:C:2023:940.

- Appeals, Art. 91–111
- Compliance and special rites, Art. 112–132: e.g. Rite regarding access to administrative documents, Art. 116; Protection against the inaction of the public administration, Art. 117

Examples from the Criminal Procedure Code:

9

- Book I: Jurisdiction, Art. 4 et seq.
- Book I: Postponement of the trial, Art. 45 et seq.
- Book I: Defence rights, Art. 60 et seq.
- Book II: Preliminary provisions, Art. 109–124: e.g. language of documents, Art. 109; Prohibition of publication of documents and images, Art. 114; Presumption of innocence, Art. 115-bis; Requesting for copies of documents and information by the public prosecutor, Art. 117
- Book II: Acts and measures of the judge, Art. 125–133
- Book II: Documentation of the documents, Art. 134–142
- Book II: Time limits, Art. 172–176
- Book II: Nullity, Art. 177–186
- Book III: Evidence, Art. 187–271
- Book IV: Precautionary measures, Art. 272–325
- Book V: Preliminary investigations, Art. 326–437
- Book VI: Special Proceedings, Art. 438–464-novies
- Book VII: Judgment
- Book VIII: Proceedings before the court in monochromatic composition, Art. 549–567
- Book IX: Appeals

Competent authorities:

10

- Public Prosecutor (*Procuratore della Repubblica*)
- General Prosecutor's Office at the Court of Appeal (Regional), e.g. of Bologna
- Judicial Police
- Tax Police (*Guarda di Finanza*)
- Pre-trial investigating judge
- *Carabinieri*
- Investigators of the Ministry of Agriculture
 - Carabinieri Agricultural Policies Command (*Comando Carabinieri Politiche Agricole*)
 - Provincial Inspectorate of Agriculture (*Ispettorato Provinciale dell'Agricoltura – IPA*)

- Financial Intelligence Unit
- Customs and Monopoly Agency (*Agenzia delle Dogane, Monopoli di Stato*)
- Revenue Agency (*Agenzia delle Entrate*)
- Audit Authority
- Certifying Authority
- Managing Authorities
- Directorate-General for Maritime Fisheries and Aquaculture (*PEMAC – Direzione generale per la pesca marittima e l’acquacoltura*)
- Value added tax offices, Art. 51 Presidential Decree No 633/1972
- Provincial tax commissions
- Regional tax commissions

b) Internal advisory and control procedure: Legality check involving national law

11 Sources and national sections 1: Art. 17 OLAF Regulation – Overview for Italy

<p>Code of Administrative Process/<i>Codice del processo amministrativo</i></p>	<p>Book I General provisions Title I Principles and bodies of administrative jurisdiction, e.g. Art. 1 Effectiveness of administrative protection Art. 2 Due process Title III Actions and questions Art. 27 contradictory Art- 28 intervention Book IV Compliance and special rites Art. 112 et seq.</p>
<p>Criminal Procedure Code/<i>Codice di procedura penale</i></p>	<p>Book I: Defence rights, Art. 60 et seq. Book II: Preliminary provisions, Art. 109–124: e.g. language of documents, Art. 109; Prohibition of publication of documents and images, Art. 114; Presumption of innocence, Art. 115-bis;</p>

Requesting for copies of documents and information by the public prosecutor, Art. 117

Book III: Evidence, Art. 187–271

General Provisions, Art. 187 et seq.
 Means of Evidence, Art. 194 et seq.
 Means of searching for evidence, Art. 244 et seq.

Book IV: Precautionary measures, Art. 272–325

Personal precautionary measures, Art. 272 et seq.
 Real precautionary measures, Art. 316 et seq.

Book V: Preliminary investigations, Art. 326–437

Title I: General provisions (articles 326–329)

Title II: Notification of crime (articles 330–335)

Title III: Conditions of admissibility (articles 336–346)

Title IV: Activities on the initiative of the judicial police (articles 347–357)

Title V: Activities of the public prosecutor (articles 358–378)

Title VI: Arrest in flagrante delicto and arrest (articles 379–391)

Title VI bis: Defensive investigations (articles. 391 bis-391 nonies)

Title VII: Evidence incident (articles 392–404)

Title VIII: Closure of preliminary investigations (articles 405–415 bis)

Title IX: Preliminary hearing(articles 416–433)

	Title X: Revocation of the judgment of non-prosecution (articles 434–437)
Code of Tax Process/ <i>Codice del processo tributario</i>	<p>Title I General Provisions, e.g. Art. 7 Powers of the tax commissions</p> <p>Title II The trial Chapter I The procedure before the provincial tax commission, Art. 18 et seq. Chapter II Precautionary and conciliatory proceedings, Art. 47–48-ter Chapter III Appeals Chapter IV Execution of sentences of the tax commissions, Art. 68–70</p>

Source: The authors.

[Article 18–21 omitted]

Annex

Table 8 EPPO Italy Judicial Actions – Summary Table (November 2023 to July 2025)

Date	Operation	EU-Budget	Offences	Legal Basis	Suspects/Accused	Estim. Damage	Measures Taken	Facts
21/07/2025	RRF Tax Credit Fraud	RRF	Fraud, accounting fraud, organisation	EPPO Regulation Art. 22(a), Penal Code	35 people, 16 firms	€3.3 million	€3.3M seized, searches in 12 provinces	Fake green tax credit claims
04/07/2025	Greasy Hands	VAT	VAT fraud, excise evasion, laundering	EPPO Regulation Art. 22(b)	13 convicted	€15 million	34 years prison total, €12M seized	Oil VAT evasion network
03/07/2025	Vortex	VAT	VAT fraud (cars), laundering	EPPO Regulation Art. 22(b), Margin VAT abuse	6 arrested (DE, IT)	€100 million	€20M seized, 80 searches, 50 Italian bank accounts frozen	Luxury car VAT evasion
25/06/2025	Moby Dick – 11	VAT	Mafia aid, laundering	EPPO Reg. Art. 22(c), Art. 416-bis	11 arrested	Linked to €520M	Mafia links confirmed, new arrests	Camorra clan linked to fraud
27/05/2025	Moby Dick Update	VAT	VAT fraud, mafia, laundering	Same as above	1 ring-leader detained	Part of €520M	Detention, update on international arrest	Ring-leader surrendered in Milan
27/05/2025	Corruption in EAFRD	EAFRD	Fraud, corruption, aiding criminal group	EPPO Regulation Art. 22(a), Penal Code	39 suspects	€1.1 million	€1.1M seizure, searches, 14 individuals targeted	Police officer aided fraud ring

07/05/2025	Agri-culture PO Fraud	CAP	Fraud, crimi-nal as-socia-tion	EPPO Regu-lation Art. 22(a), EU CAP Law	67 peo-ple, 27 compa-nies	€12.5 million	12 arrested, €9.6M seized	False pro-ducer org. certifica-tion
30/04/2025	Ce-ramic Fund Fraud	ERDF	Over-invoic-ing, fraud	EPPO Regu-lation Art. 22(a)	5 individ-uals, 1 firm	€800,00 0	Property and asset seizures	Ceramic machinery fake costs
23/04/2025	Fuel Family	VAT	VAT fraud, laun-dering	EPPO Regu-lation Art. 22(b)	59 sus-pects, 13 compa-nies	€260 million	€20M as-sets seized, including resort + 150 prop-erties	Family VAT fraud with fuel
25/03/2025	Plastic VAT Fraud	VAT	VAT fraud, tax of-fences	EPPO Regu-lation Art. 22(b), Penal Code	52 indi-viduals	€100 million	13 arrests, €100M sei-zure or-dered	Plastic sales shell firms
24/03/2025	Agri-cul-tural CAP Fraud	CAP	Fraud, false decla-rations	EPPO Regu-lation Art. 22(a)	4 sus-pects (2 individ-uals, 2 CAA agents)	€160,00 0	€160k as- set freeze, home searches	Falsified land lease claims
07/03/2025	VoIP VAT Fraud	VAT	VAT fraud, crimi-nal as-socia-tion	EPPO Regu-lation Art. 22(b), na-tional tax law	5 sus-pects	€64.04 million	2 arrested, €64M as- sets frozen, home sei-zures	Shell firms sold VoIP credit
05/03/2025	Dragon e	VAT + cus-toms	VAT fraud, laun-dering, crimi-nal or-ganisa-tion	EPPO Reg. Art. 22(b), CP42 abuse	17 sus-pects (4 Italians, 13 Chi-nese)	€71.05 million	€71M asset freeze, 29 shell firms identified	Chinese goods CP42 fraud

10/02/2025	Steel Coils Dumping	Anti-dumping + customs	Evasion of anti-dumping duties	EU 2019 Anti-Dumping Regulation	2 companies	€3.3 million	€3.3M asset freeze, import origin falsification	Misdeclared Chinese steel origin
30/01/2025	Fuel VAT Fraud	VAT	VAT fraud (MTIC), money laundering	EPPO Regulation Art. 22(b), Penal Code	1 firm	€14 million	€5M assets frozen, cash found in car	Fuel below market resale
15/01/2025	Cigarette Smuggling	Customs	Smuggling, organised crime	Penal Code + EPPO Regulation Art. 22(b)	16 suspects (14 arrested)	€850,000 damage	Arrests, €1M asset seizures	Cigarettes from North Africa
03/01/2025	Aquaculture Fraud	EMFF	Fraud, embezzlement, laundering	EPPO Regulation Art. 22(a), national law	9 individuals, 5 firms	€4 million	Charges, €1.4M seized	Fake tank construction claims
20/12/2024	Cheap Ink	VAT	VAT fraud, organised crime	EPPO Regulation Art. 22(b)	>100 suspects	€58 million	7 convicted, ongoing trials	Toner import VAT evasion
14/11/2024	Moby Dick	VAT	VAT fraud, mafia involvement, laundering	EPPO Reg. Art. 22(b), 22(c), Penal Code Art. 416-bis	195 suspects, 400 firms	€520 million	43 arrests, 7 EAWs, €520M seized, verdicts, bans	Mafia-backed VAT carousel scheme
30/10/2024	Training Embezzlement	ESF, ERDF, Cohesion Fund	Embezzlement	EPPO Regulation Art. 22(a), Penal Code	Vocational institute staff	€1 million	Property seizure (2 houses)	Fees charged for free courses

25/10/2024	Chinese Underground Network	VAT + customs	VAT fraud, money laundering, criminal association	National Criminal Code, EPPO Reg. Art. 22(b)	33 suspects (7 arrested)	€113 million VAT evaded	Arrests, seizures (€116M), home searches, property seizures	Clothing import tax fraud scheme
24/10/2024	The Good Lobby	RRF	Corruption, criminal organisation	Italian Penal Code, EPPO Regulation Art. 22(b), (d)	13 suspects incl. may or	€5 million RRF misuse	Preliminary Investigations at the Court of Frosinone Arrests, asset freeze (€500k)	Civil servants took bribes
23/10/2024	Pellet Plant Fraud, EPPO Office Naples	ERDF	Fraud, use of false invoices	EPPO Regulation Art. 22(a), Italian Law	3 suspects	€315,000 ERDF	Court of Latina, House arrest, seizures (€267k + €48k)	Fictitious machinery purchases
21/10/2024	Airpods VAT Fraud, EPPO Offices Milan and Roma	VAT	VAT fraud	EPPO Regulation Art. 22(b)	>50 suspects	€40 million (partial)	€28.8M freeze, sentences (6y/4y), prior €1.8M freeze	Airpods missing trader chain
17/10/2024	Sicily ESF Fraud, EPPO Office Palermo	ESF	Fraud, laundering, self-laundering	EPPO Regulation Art. 22(a), Penal Code	Local politicians	€8.7 million	Court of Palermo, €9M freeze, bans from participating in subsidy procedures for 12 months, house arrests for 4 arrests	Training funds diverted politically

15/10/2024	EPPO Office Milan, Social Fraud in tendering procedures	ESF, ERDF	Procurement fraud	EPPO Art. 22, 25	Consultants, Consortium of the EU funds management team		Searches by Guardia di Finanza	Public tenders, Consulting Services Region of Lombardy how to use EU funds, working hours in a month were too much
11/10/2024	EPPO Office Bologna, Textile fabrics fraud (from China)	VAT losses, Issuing fake invoice, No moving to tax-warehouses	VAT fraud	Illegal Importation, Customs Code	Owners and entrepreneur, managers of custom shipping companies to Prato, Bologna from China	13.6 million	Freezing orders 3.6 million, Seizure of fabrics (value 4.9 million), cash at suspects home € 133.000, 128 million at bank account	VAT loss ca. 13.6 million
4/10/2024	EPPO Office Palermo	EU funds, Falsely declaring number of pupils	Embezzlement, 12 suspects	Funds Requirements, School laws	School principal, deputy and colleagues Public officials, teachers, school assistants as accomplices	100.000 €	Freezing of € 20.000	
2/10/2024	EPPO Office Milan, VoIP fraud	Illicit profits from sales, VAT fraud	Criminal association, VAT fraud 4 suspects	Tax Codes, VAT Code, EPPO Regulation	Company in Emilia-Romania with other businesses, Two main beneficiaries	97 million	Court of Milan ordered Searches	Company trading in gas sector claiming tax reimbursements without justification with VoIP

10/6/2024	EPPO Office Milan Shell Companies	VAT fraud	VAT evasion	VAT Code	3 suspects	50 million	Tribunal of Busto Arzizio, pre-trial detention, Searches, Cash dogs searching for currency, Two seized rolex watches, computers, smartphones, rifles, weapons	Goods sold underprice AirPods, electronic devices and no VAT payment in Italy
20/5/2024	EPPO Office Palermo	CAP funds Fraud Reparto Carabinieri per la Tutela Agroalimentare di Messina	Fraud, Subsidy fraud	Agricultural Laws, Subsidy laws	3 suspects	44.000 €	Court of Catania,	Falsely declaring ownership and possession of land (368 hectares) in Sicily, AEGA payments received without rights to receive them
4/4/2024	Resilien Crime	RFF	NRPR frauds, general fraud offences	EU Regulation on Recovery, national statutes on how to apply		600 milliom EU and Italian budgets		

25/3/2024	EPPO Office Bologna, Fuel Fraud	MTCI fraud	3 suspects, Italians working from Dubai, Milan, Naples, VAT Fraud	VAT Code, Art. 31 EPPO Regulation	Shell company owners, Traders	92 million estimated,	Assists seized 2.4 million, 18 properties seized, Freezing in Romania with EPPO Support Structure	Introducing petroleum from Croatia for resale below market prices
27/2/2024	EPPO Office Palermo "Final Toast"	MTCI fraud, VAT fraud	Criminal organization transnational, mafia associations	MTC I fraud, VAT Code, Criminal Code	Ten suspects	30 million VAT losses	Precautionary measures, arrest warrants, custody, house arrest, 98 real estates, 20 cars, jewellery and luxury watches seized	Using fake invoices for non-existent goods, Simulating co-funded EU courses for employees, claiming tax credits for courses
23/2/2024	Olive Oil, EPPO Palermo Office	EARD F	Receiving non-reimbursable funding from EU money		3 suspects	248.000 € illicit financial gain, VAT evasion of 250.000 and falsified expense of 260.000	760.000 € seized, 200.000 in cash and real estate including oil mill, Court of Sciacca freezing order granted	Aiming of building Oil mills by using fake invoices to receive funding, artificially inflating costs

16/01/2024	EPPO Office Bologna	Horizon 2020 programme, EU tenders	Subsidy fraud, Art. 640	EU Regulation, Tendering procedure, EPPO Regulation	Couple of technology company, several companies	730.000 €	Freezing order, Carried out by Carabinieri of Bologna's Investigative Department	Report of the European Court of Auditors
11/5/2023	EPPO Office Turin	CAP funds, Rice sector, Piedmont region, Province of Novara	Aggravated fraud, embezzlement	Criminal Code	Agricultural company, 3 suspects, Village of San Pietro Mosezzo	500.000 €	Preventive seizure, Court of Novara Forensic analysis	Company wanted to use rice dryers, use of the dryers by other farmers against the contract rules

- 1 The data analysed in this study is based on official press releases published by the Procura Europea.⁵⁴⁹ This table-based summary categorises Art. 22 to 26 and presents selected EPPO actions and judicial decisions from mid-2023 to mid-2025. The aim is to facilitate a comparative understanding of the types of suspected frauds targeted by the EPPO, the kinds of EU budget lines most frequently involved, and the regional prosecutorial strategies adopted across Italy. Although not exhaustive of all published communications, the selection covers representative and officially confirmed actions involving arrests, seizures, freezing orders, indictments, and other judicial measures. The categorisation provides insight into the thematic and regional concentration of EPPO activity in Italy over the analysed period.
- 2 OLAF's judicial actions and recommendations are not displayed within this volume but they can be obtained on its website. If they are made public they are considered important actions and successes.

⁵⁴⁹ Available at: https://procura-epo.giustizia.it/it/avvisi_eventi_comunicati.page?frame9_item=1&titolo_textFieldName_frame9=&anno=&tipologia_textFieldName_frame9=comunicato. Accessed 30 June 2025.

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Index

- Administrative Cooperation Agreements (ACAs) 326
- AFCOS 463
- Aggravated fraud for obtaining public funds 83
- allegation 79
- anti-fraud architecture of 325
- Anti-terrorism General Prosecutor 79
- Appeal Courts 79
- art. 192 of the Italian Code of Criminal Procedure 82
- Art. 30 EPPO Regulation 205
- Attorney General 75
- attribution of competences 80
- authorization 209
- bank accounts 418
- banking secrecy 395
- beneficiary 334
- candidates for the post of European Prosecutor 77
- Case Management System 120
- checks 379
- competent national administrative authorities 466
- complaint 79
- costly measures 74
- crime report
 - national register (for EPPO) 73
- criminal proceeding
 - length of 75
- Customs Agency 423
- customs duties 344
- data integrity 216
- decision to prosecute 85
- defence lawyer 84
- designation of European Delegated Prosecutors 77
- Director-General 427, 469
- disciplinary proceedings against EDPs 79
- dismissal of the case 80
- dismissal-of-the-case procedure 80
- dismissed by decision of the Permanent Chamber 81
- documentary inspection 372
- EAWs 80
- economic operators 408
- electronic case file 120
- EP See European Public Prosecutor (for Italy)
- EPPO
 - Annual Report(s) 75
- EPPO Legal Service Office 106
- establishment of the EPPO 325
 - problems 82
- Eurojust 467
- Europol 467
- EU-Rule of Law Reports 75
- exclusivity clause 78
- Financial Administration 406
- fraud against the EU budget 83
- frauds 112
- functional dependence
 - between police and prosecutor 84
- gathered in another Member State 82
- grant recipient 334
- Guardia di Finanza 84
- High Council of the Judiciary 73, 77
- house searches 212
- independence of magistrates 77
- inspection rights 409

- instruction 158
- internal guidelines 326
- interviews 407
- investigative powers 84
- Irregularities Management System 455
- Italian Anti-fraud Committee 463
- Italian Constitution 84
- Italian justice 75
- IT-forensic 216
- judge for preliminary investigations 84
- judicial control 81
- judicial police 84
- judiciary
 - organisation and role of 77
- legality check 469
- Legislative Decree n. 156/2022 83
- Legislative Decree n. 75/2020 83
- legislative decree n. 9/2021 79
- Legislative Decree n. 9/2021 77
- Legislative Decree No. 156 of 4 October 2022 109
- Legislative Decree No. 9/2021 73
- mandatory prosecution 81
- merging of cases 74
- Misapplication of public funds 83
- new facts 81
- offence of fraud 83
- official secret 405
- Permanent Chamber
 - decision and competence 80
- persons concerned 408
- PIF Directive (EU) 2017/1371 83
- PIF-Acquis
 - EU 75
- powers of EDPs 78
- powers of investigation 384
- preliminary investigations 84
- preservation of evidence 407
- prevented by national law 446
- principle of cross-examination 82
- principle of investigation 344
- principle of mandatory prosecution 85
- privacy 395
- privilege of a Union official 205
- progress report
 - by EDP on investigation 73
- proportionality 216
- protection of community financial interests 383
- reallocation 74
- reasonable grounds 105
- regional offices 86
- Regulation 2017/1939 77
- relevant laws 75
- report 79, 450
- right to
 - access the information on detention 154
 - an interpreter and translation 154
 - appear before the judge to carry out an interrogation 154
 - appoint a trusted lawyer 154
 - be brought before the judicial authority for validation 154
 - inform consular authorities 154
 - obtain information on the accusation 154
- right to evidence 216
- seconded national experts *See EDPs*
- seizure 407
- signed Protocol of Cooperation between the EPPO and the National Anti-mafia and Anti-terrorism Direction 78
- simplified prosecution procedure 85
- special investigative track 78
- special register 79
- Staff Regulations of Officials 424
- stage of preliminary hearing 85
- statutes of limitations 134

-
- structural funds 383
 - subsidies 87
 - substantive criminal law 82
 - Supreme Court of Cassation 75
 - technical assessments 84
 - territorially competent 83
 - territory 105
 - the allocation of competences 79
 - time limits 212
 - tobacco smuggling 345
 - transfer of information 446
 - transfers of proceedings to Italian national authorities 80
 - trial court 82
 - UCLAF 325
 - usual register
 - for cases 80
 - VAT irregularities 406

This **Italian EPPO/OLAF volume** contains a collection of Italian legislation on criminal and administrative investigations into EU fraud offences. The first part deals with the possible measures that the EPPO can take in Italy, practical examples and types of EU fraud. The second part of this volume is a compendium for OLAF investigations in Italy, referring to the Italian legislation relevant to Articles 3 to 17 of the OLAF Regulation.

While written in English, the volume includes footnotes that reproduce the original Italian legislation in the local language. Easily navigable with the help of visual symbols, it is designed as a quick reference tool for academics, students, practitioners and other interested readers.

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