

# Practical Application of Covert Investigative (Search) Actions in the Investigation of Economic Crimes within Customs Administration

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## Abstract

Investigating economic crimes in customs is an extremely difficult process due to numerous procedural and evidentiary issues. These problems can be even more difficult to address when countries are in the process of developing their institutions and increasing the level of integration into international markets. Therefore, this paper examined the practice of applying undercover investigative (search) actions to investigate economic crimes committed under the authority of customs. In order to achieve this goal, a mixed-methods research design has been used, which combines comparative law analysis, socio-legal assessment, interpretative doctrine and empirical analysis of 320 criminal proceedings carried out between 2020 and 2023. According to the results of the study, covert investigative (search) actions have primarily been applied in cases involving excise smuggling and other complex fraud schemes. The most common grounds for excluding evidence were the fact that there was a lack of adherence to the procedures and/or there was no oversight of the judges regarding these procedures. Regulations at the national levels do not follow EU regulatory requirements or provide adequate procedural protections for individuals suspected of committing customs-related offenses. Finally, this study demonstrates the practical significance of undercover investigative actions for improving the efficiency of investigations related to customs economic crimes and also identified several critical procedural factors that impact the reliability of the evidence. The originality of this research comes from the fact that it represents an empirical analysis of a specific area of activity (customs).

**Keywords:** Comparative Legal Analysis, Covert Investigative (Search) Actions, Criminal Procedure, Customs Administration, Customs Offenses; Economic Crime, Evidence Admissibility.

## Introduction

In recent years, significant risk factors to customs' economic safety and integrity of global trade movements have been introduced by the growth of cross border commerce, by the digitalization of customs processes, and by the increasing complexity of international organized crime networks. The continued presence of smuggling of exciseable goods, fraud concerning customs documentation, schemes for under declaring the value of goods being imported/exported and fictive import/export transactions pose a continuing threat to customs services in countries that are undergoing institutional reforms and aligning their national laws with EU law. As such, there is an ongoing need to develop more sophisticated investigative tools that can uncover

hidden criminal activity as well as organized economic crimes (1).

Covert search tactics, used by investigators to detect sophisticated white-collar crimes including corruption, have proven to be a viable method when standard investigative techniques are ineffective (2). Previous research has shown that the use of controlled delivery, undercover cooperation, surveillance, and other operational/technical investigative methods can be used to identify the organizational structure of crime networks, track illicit money laundering schemes and document organized crime activity on a coordinated level (3). Legal comparisons across jurisdictions have also shown that countries who implement strict rules for covert investigations

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and provide adequate judicial oversight achieve higher standards of evidence reliability and increased public confidence in covert investigations (4).

In addition to that, the existing body of literature is still characterized by evident constraints. Most of the previous studies were directed toward the investigation of common crime or to specific covert operations without taking into account the procedural specifics of the customs-related economic offenses. The empirical evaluation of authorization, implementation and court assessment of covert investigative actions is limited in the customs area. Additionally, inconsistent interpretations of judicial decisions, documentation of procedures and proportionality assessments have been identified as recurrent weaknesses that affect the admissibility of the evidence acquired by using covert investigative methods (5).

Therefore, a clear research deficit exists concerning the sectoral application of covert investigative (search) activities in customs investigations, especially with regard to their procedural justification, results of evidence collection and compliance with the EU-standards. The existing research has also inadequately investigated how these instruments of investigation operate in practice within the customs authorities and how deficits in the procedures influence the judicial decision-making (6).

The primary objective of this research is to examine both the practical success, procedural conformity and evidentiary quality of covert search operations as an investigative tool in the detection of economic crime in the customs area. In order to fulfill this objective, the research will pursue three main objectives: to examine the legal and regulatory framework governing covert investigations in customs related cases; to identify procedural issues which affect the practical application and judicial approval of covert investigations; and to assess whether evidence collected through covert investigations can be admitted into criminal proceedings through a comparative examination of selected member states of the European Union.

This is innovative in that it includes an integrated empirical legal analysis of covert search activities in the Customs domain. It evaluates investigative

activity (and evidence produced from such activity) based on 320 criminal proceedings; therefore, by using both Doctrinal Comparative Socio-Legal approaches, it will provide an assessment of the investigation process and evidence produced as part of this process in relation to this one area of law enforcement. This approach can help develop practical guidelines for procedural standardisation (harmonization); assist in clarifying what constitutes acceptable standards of admissibility; and support the development of uniform investigative processes consistent with those established under EU law.

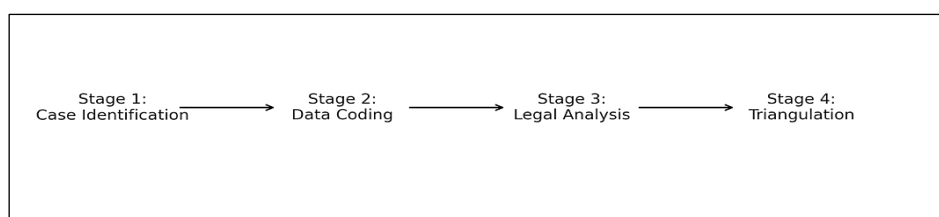
## **Methodology**

### **Research Procedure**

This study employed an integrated multi-stage research design that assessed how covert investigative (search) actions could be practically used by law enforcement during criminal investigations in economic crimes within the Customs Sector. Empirical phases of the research took place from August 2023 to April 2024. The methodological framework included a combination of Legal Analysis and Empirical Assessment of Procedural Regulation and Investigative Practice (7).

The research process included four consecutive stages. Stage one involved identifying criminal cases utilizing covert investigative (search) actions based upon official judicial and investigative records. Stage two involved extracting systematic data regarding the procedural aspects of the criminal proceeding including the covert actions utilized, documentation and authorization procedures for the covert actions, and judicial review of the evidence obtained. Stage three involved conducting comparative doctrinal legal analysis of the legal framework governing covert investigative actions at both National and International levels, specifically addressing the Standards of Authorization, the Requirements of Proportionality and the Procedural Safeguards of such actions (8). Stage four involved verifying the findings through Triangulation utilizing Expert Assessments, Institutional Reports and Comparative Legal Materials (9).

The research stages are graphically represented in Figure 1, which illustrates the progression from Case Selection and Data Coding to Doctrinal Analysis and Comparative Evaluation.



**Figure 1:** Research Stages (10)

## Sample Formation

The study's empirical basis was composed of 320 investigations undertaken by Ukrainian investigators in response to custom-related crimes from 2020 through 2023. In order to establish a representative sample of the crime categories and investigative procedures, a stratified random sampling strategy was employed. All of these cases involved offenses against customs such as tax evasion; the fabrication of customs documentation; or fictitious import-export operations.

Two stratification criteria were employed: the offense type; and whether undercover investigative (search) actions had been used pursuant to the applicable provisions of the Criminal Procedure Code. Thus, the sample ensured that all offense categories with differing numbers of covert investigative activities were represented proportionally (11).

The selected sample size of 320 was determined based on three factors. First, initial statistical assessments indicated that at least 250-270 cases would need to be analyzed to have stable proportions of undercover investigative actions for each of the offense categories. Second, the sample consisted of cases from each of the large customs areas so that there would be sufficient regional and institutional variety. Finally, an additional control group consisting of twenty randomly selected cases was included to evaluate the consistency of coding and procedural conformity among various investigative units (12). To facilitate comparison, several selected member states of the European Union including Germany, France, Poland, the Czech Republic, and Slovakia, were also included in the analysis. The jurisdictions were selected due to the availability of procedural data, similarities in investigative approaches, and because they are directly related

to the standardization of regulations on the use of covert investigative actions in Europe (13).

## Tools

Statistical/analytical computer programs were used to process quantitative/qualitative data collected empirically. The two independent coders used an identical coding strategy for all empirical data, thereby ensuring coder reliability and consistency in coding. To determine the intercoder agreement in coding, the two coders' agreements were calculated with Cohen's Kappa coefficient; results indicated that the two coders agreed to a very high degree. An additional source of validation for the research findings was provided through external triangulation as part of the research methodology by having experts from the fields of law enforcement and customs investigations evaluate the research findings (14). The combination of empirical methods, doctrinal interpretations, comparative assessments of laws, and socio-legal evaluations provided the researcher a way to comprehensively examine covert investigative (search) procedures as both a procedural method for the customs agency to perform searches and also as an actual investigative technique for the customs agency.

## Results

### Statistical Parameters of the Use of Covert Investigative (Search) Actions

Empirical data collected for a total of 320 criminal proceedings show clear patterns in how undercover investigative (search) methods are used to investigate different types of customs-related economic crimes. This distribution of undercover methods based on offense type can be seen in Table 1, with that table showing the number of times each method of undercover investigative actions was used in cases involving excise smuggling, falsifying customs declarations, and fictitious export-import transactions (15).

**Table 1:** The Number of Uses for Each Type of CI(S)A per Crime Category (15, 16)

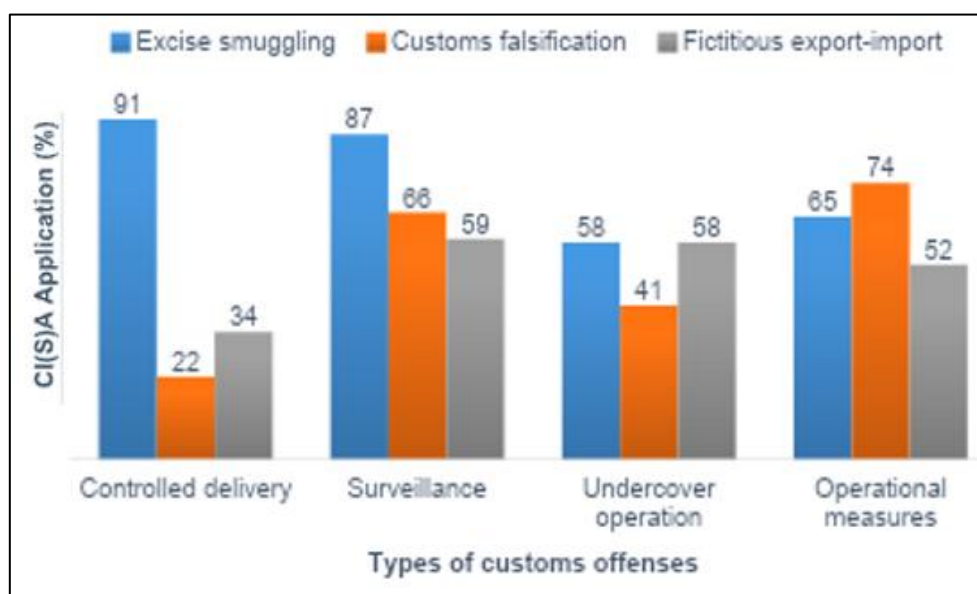
Type CI(S)A	Smuggling of excise goods	Falsification of customs declarations	Fictitious export-import transaction
Controlled delivery	91	22	34
Surveillance (visual/audio)	87	66	59
Undercover operation	58	41	58
Operational and technical measures	65	74	52

Controlled Delivery was used primarily for investigations into the smuggling of taxable products, as the transportation of the product itself facilitated the investigators to monitor the product's physical movement and to record evidence of such movement. It was used less in cases of fraudulent documents and fictitious transactions, since there is no physical good to track or monitor. Both Visual and Audio surveillance methods are applied on an ongoing basis with respect to all categories of crime, given that they can be useful for a wide variety of investigative purposes. Undercover operations and other operational technical methods were

most commonly used for those crimes that involved organized groups and clandestine financial transactions.

### Use of Covert Investigative (Search) Actions by Type of Crime

Figure 2 represents the frequency of the application of covert investigation (search) methods for each of the main categories of customs-related criminal offenses of an economic nature. Covert methods were most frequently used during investigations related to excise smuggling, as this is often a transnational/organized crime that requires specialized investigative tools to collect admissible evidence.

**Figure 2:** Frequency of CI(S)A Application for Different Types of Customs Offenses (16, 17)

Covert methods were used in a significant number of cases involving falsification of customs documentation, primarily through the use of surveillance and/or operational-technical methods. In addition fictitious export-import operations showed a large degree of covert method application, particularly with regard to digital monitoring and financial tracking. Together these results show that due to their complexity and clandestine nature, customs-related economic crimes are subject to the systematic use of covert investigative instruments.

### Procedural Validity and Judicial Outcomes

Procedural compliance and legal judgments as they relate to covert investigative (search) actions that have been formally approved were evaluated in 246 criminal proceedings; the results of the evaluation are presented in Table 2, which shows the percent of each case type which evidenced complete procedural compliance with all requirements, evidence of procedural failure(s), and the disposition of the evidence in the case.

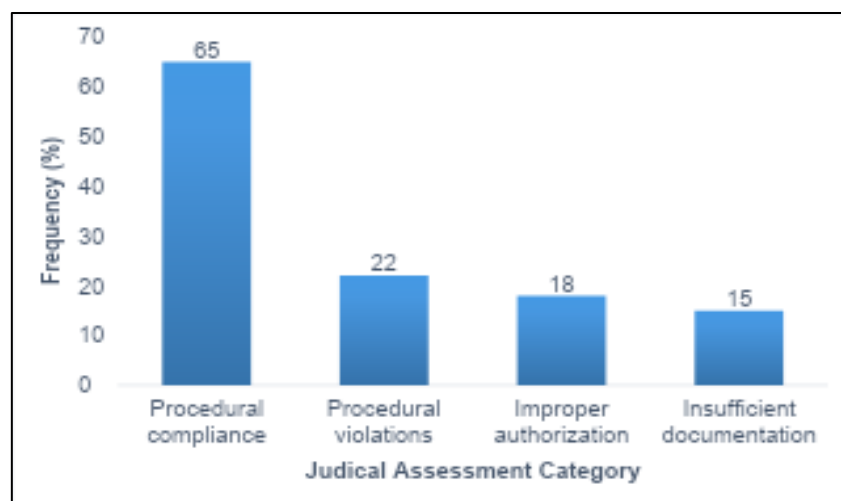
**Table 2:** Legal Procedural Legitimacy and Trial Admissibility of Evidence from CI(S)A

Category	% of total (n = 246)
CI(S)A with full judicial powers	71
CI(S)A with procedural deficiencies	18
Evidence admitted without objection	65
Evidence excluded due to violations	22

Documentation of pre-covert authorization of judicial action related to the covert measures was found in most cases. In addition, many of these cases involved procedural failures, such as delays in obtaining authorization, and/or documentation of all aspects of the authorization process. A large number of the courts allowed the use of the evidence obtained through covert investigative actions as evidence in the trials; Exclusion primarily occurred due to procedural violations rather than a lack of probative value of the evidence. These findings illustrate the importance of procedural compliance as a factor in evidentiary admissibility.

### Grounds for Admissibility and Exclusion of Evidence Obtained through Covert Actions

Figure 3 outlines the bases on which Courts made decisions regarding whether or not evidence obtained from covert investigation techniques were admissible into Court. In the vast majority of cases, Courts admitted evidence when there had been compliance with appropriate procedures. Excluded evidence was most frequently based upon procedural failure as a ground for exclusion, followed by improper authorization, insufficient documentation and abuse of the scope of power granted to investigators.

**Figure 3:** Acceptability Indicators and Grounds for Rejecting CI(S)A Evidence (18)

These numbers clearly illustrate that the primary factor resulting in the exclusion of evidence is procedural deficiency, and not the material's substantive relevancy to the case at hand; and thus it is critical that Investigators follow the letter of the law with regard to obtaining and documenting proper authorization for covert investigations.

### Interpretative Differences in the Application of Controlled Delivery

The analysis showed important variations in how judges have interpreted the idea of "controlled delivery" in the court decisions that were reviewed; Table 3 describes these different judicial interpretations as formal, pragmatic, or a combination of both.

A large number of cases used a formal interpretive method of analysis when analyzing whether there was an accurate and complete adherence to the procedural authorizations and documentation required by law; In contrast, a much smaller number of cases used a pragmatic method of analysis in which the covert operation significantly contributed to proving the elements of the crime; Mixed methods of analysis were used in other cases because of inconsistent judicial decision-making and lack of clarity in the relevant statutory guidelines. These results show that there is variation among judges' use of legal precedent, and provide additional support for the need for clearly defined procedures.

**Table 3:** Contrasting Legal Definitions for "Controlled Delivery"

Interpretation category	Number of cases	Percentage (%)	Description
Strict formal interpretation	130	40.6	Courts require explicit procedural authorisation and detailed documentation; evidence evaluated strictly.
Pragmatic evidentiary interpretation	100	31.3	Courts prioritise probative value when the method substantially contributes to proving the offense.
Mixed interpretation	90	28.1	Courts apply inconsistent reasoning due to unclear guidance and divergent precedents.

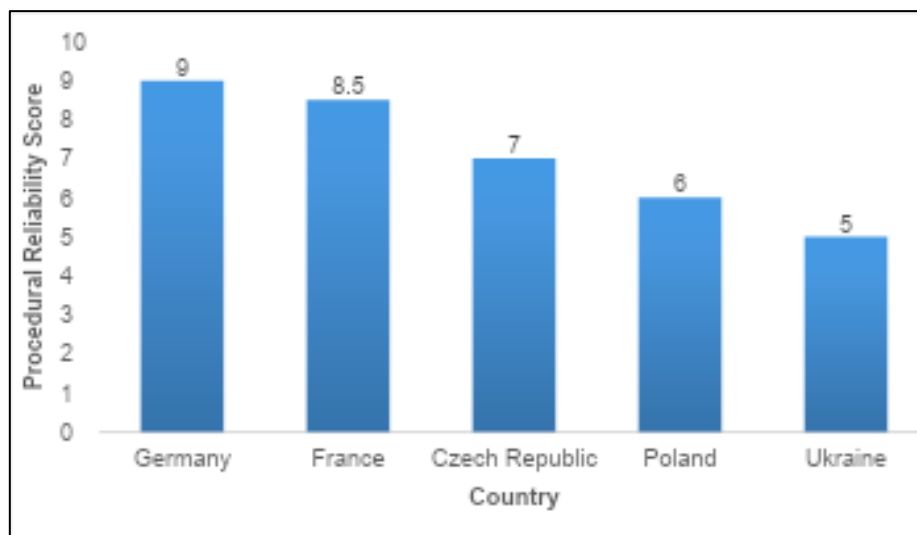
**Table 4:** Comparative Assessment of Legal Regulation CI(S)A (Average Scores by Country)

Country	Judicial review	Standards of evidence	Legal guarantees	Total score
Germany	3.0	3.0	3.0	9.0
France	3.0	2.5	3.0	8.5
Czech Republic	2.5	2.0	2.5	7.0
Poland	2.0	2.0	2.0	6.0
Ukraine	2.0	1.5	1.5	5.0

### Comparative Assessment of Regulatory Reliability

A comparison between covert investigative (search) action regulations from several jurisdictions within the EU and Ukraine were evaluated. A summary of these comparisons can be seen in Table 4 that shows an average rating for judicial review; evidentiary requirements; and legal protections for each jurisdiction, using a standardization scale to evaluate the jurisdictions.

These comparisons provide evidence of increased procedural reliability in those jurisdictions where there is a strong presence of established judicial oversight and specific legal protections. Conversely, the lower aggregate rating found in Ukraine provides evidence of deficiencies in evidentiary protection, proportionality evaluations, and the consistency of judicial reviews. These differences are also shown graphically in Figure 4, providing an illustration of the total amount of procedural reliability among the jurisdictions examined.

**Figure 4:** Comparative Index of Procedural Reliability (CI(S)A) (19)

### Relationship between the use of Covert Investigative Actions and Institutional Indicators

Regression Analysis was used to identify possible relationships between the frequency of covert investigative (search) action(s) and several Institutional Indicators. As shown in Table 5,

Regression Analysis revealed a Moderate Positive Association (i.e., an increase in the use of covert investigative methods was associated with an increase in the amount of Information Disclosed), as well as a Moderate Inverse Relationship (i.e., an increase in the use of covert investigative methods was inversely related to an increase in Exclusion

Rates of Evidence). There was also a Weak Positive Association between the use of covert methods and Public Trust Indicators.

The associations described above suggest that when covert investigative method is applied in a structured manner, using established procedures;

they can lead to better investigative outcome. However, these results also demonstrate the importance of transparency and protections for the rights of individuals within institutions to ensure fair and effective use of covert investigative techniques.

**Table 5:** Relationship Between CI(S)A Usage and Study Efforts

Dependent variable	R-Value	Trend description
Increased information disclosure	+0.43	Moderate positive association
Reduced evidence exclusion	-0.37	Moderate inverse association
Public trust (Rating Group)	+0.21	Weak positive association

## Discussion

The study's results show that covert search actions constitute the primary investigation tool used to detect and document various types of economic crimes in the Customs Agency. The study's results also show that covert search actions were most often used in relation to excise smuggling; customs documentation forgery or alteration; fictitious import-export transactions; and in cases where these offenses exhibited transnational characteristics, clandestine financial transactions and organized crime activity. Prior studies have indicated that covert search action is an effective means of detecting and documenting both hidden and complex types of economic crimes that cannot be adequately addressed using conventional search actions alone (20).

In addition to this, the empirical research shows that whether or not covert investigative methods are successful also depends on how well the investigative procedures have been followed. As such, courts admitted the evidence which had been collected using covert measures in many of the cases where judicial authorization before the action, an appropriate balance between the need to investigate and the potential to infringe privacy, and adequate documentation of the investigation had occurred; conversely, however, the main reasons why courts excluded the evidence which had been collected using covert measures included lack of procedural regularity (delayed authorization, inadequate documentation of the investigation, etc.), including extending investigative authority beyond the limits which had been set out in the legislation (21).

Dissimilarities in the judicial construction of law — notably with respect to the use of controlled delivery — have been found to be one reason for inconsistent evidentiary results. In addition to the coexistence of formalist, pragmatist, and mixed

interpretive methods, the lack of clearness in regulatory guidance, as well as differences in how judges apply the law reflect this ambiguity and undermine legal certainty. Such ambiguity in the interpretation of law could also weaken the effectiveness of covert investigative measures in customs related cases. This study suggests that clearer legislative definitions, as well as procedural standards for all parties involved, are needed to reduce differences in interpretation and increase evidentiary reliability (22).

This comparison shows, even though some national regulations are partially aligned with EU standards, there are still large gaps in many areas such as judicial oversight, proportionality assessments and individual rights protections. Those jurisdictions that scored high in terms of the reliability of procedures used had more consistent authorization practices and stronger protection of individual rights. These results are consistent with comparative research demonstrating that strong judicial oversight and transparent procedural rules improve both the quality of evidence produced and the legitimacy of an institution.

That the positive association between the occurrence of covert investigative action and the improvement in investigative indicators (i.e., an increase in the amount of information disclosed and a decrease in the amount of evidence excluded from investigation), suggests that when used in a consistent and procedurally compliant manner; covert investigative actions can help improve the overall efficiency of the investigative process. However, the relative weakness of the association between covert investigative actions and public trust, emphasizes that for public confidence in investigative authorities to be maintained; transparency, accountability, and respect for human rights are still necessary.

Overall, this discussion points out that, as a valuable yet highly regulated tool within customs investigations, the success of covert investigative (search) actions is dependent upon the regulatory compliance of their operational use, the consistent judicial interpretation of the legal framework governing their use, and the adherence to European procedural principles.

### **Limitation**

When assessing these results, several constraints must be noted as they affect how one can interpret them. The first limitation of the study is that the empirical research focused solely on criminal trials from the customs department of Ukraine. Thus, the study's results might not be applicable in their entirety to criminal investigations of economic crimes that involve covert search actions and are regulated under different procedural regimes than those of the customs department of Ukraine.

The second constraint of the study is that there were restrictions imposed by law on accessing information considered classified and/or operationally sensitive; thus, the study was limited to using only anonymous case files and public judicial documents. This restriction limits the ability to assess the strategic and operational risks associated with high risk covert investigative actions.

The third constraint of the study is that the time frame for the observational study occurred while changes to the criminal justice system and the relevant legislative framework were being implemented. Therefore, the study could not account for the potential influence of changes to authorization processes, and mechanisms for judicial oversight that were made during the time frame of the study to the procedural implementation and evaluation of the evidence.

Fourth, the comparative study of other countries' jurisprudence was limited due to varying levels of transparency of judicial information, varying degrees of availability of judicial information, and varying degrees of institutional accountability/reporting standards across the jurisdictions. The limitations of these constraints limit the scope of comparisons between jurisdictions.

Finally, while the 320 cases used for this study provide sufficient sample sizes based on statistical methodology, the sample sizes do not allow for a comprehensive view of all regional differences in investigative practices and policies, especially in

jurisdictions that have lower volumes of cases investigated or that use different enforcement strategies/policies.

### **Recommendations**

In order to increase the legitimacy of, coherence of, and efficiency of covert investigative (search) activities in the investigation of customs-related economic offenses, a number of recommendations for action have been formulated. The first recommendation is that the procedural consistency should be increased through the formulation of common guidelines relating to judicial authorization, documentation requirements, and the evaluation of the proportionality of evidence collected during an investigation. Common guidelines for procedure will decrease the variability of judicial interpretations of the same procedure, and therefore, provide greater predictability of evidentiary outcomes.

The second recommendation is that key concepts such as controlled deliveries, undercover cooperation, and operational-technical measures used by law enforcement agencies should be clarified through legislation. The clarification of these key concepts will eliminate ambiguity and ensure that they are applied uniformly by both investigative and judicial bodies.

Third, there is a need for increased cooperation among customs authorities, pre-trial investigative bodies, and other economic security institutions; this can be achieved through cooperative agreements, shared analytical tools and systems, and integrated risk assessment systems.

Fourth, targeted training programs should be developed to build the legal and technical capacities of investigators, with a focus on areas such as digital forensics, financial analysis, and transnational customs procedures.

Fifth, covert investigative techniques should be systematically incorporated into risk-based customs management systems so that more effective investigations may be conducted, and reliance on reactive law enforcement measures may be reduced.

Sixth, further research is necessary to include the qualitative perspectives of investigators, prosecutors, and judicial actors in addition to comparative analyses of customs-related investigations in each EU Member State. This additional research will lead to the refinement of

best practices related to judicial oversight, human rights protection, and international cooperation in customs-related investigations.

## Conclusion

The conclusions from this study support the importance of using covert investigative (search) actions as a necessary procedural tool in investigating economic crimes in the Customs area. A review of 320 criminal files showed that these procedures are used most often when conducting investigations in cases concerning excise smuggling, customs document fraud, and fictitious export-import transactions; all of which cannot be adequately investigated through standard investigative techniques because they involve sophisticated, organized, and hidden criminal activities.

This study shows a direct relationship between adherence to procedure and evidence admissibility. Evidence obtained through covert investigative action is much more likely to stand up to judicial scrutiny if it was authorized by a judge before being taken and was properly documented than if there was no or improper authorization and/or documentation; both of which were the two most common reasons for excluding evidence due to violations of procedure.

These results further highlight the importance of strict adherence to procedure to maintain the legality and efficacy of covert investigative procedures.

A comparative analysis also demonstrated that although national regulations contain some similar requirements to those found in EU regulations, there are still significant differences related to the level of judicial oversight, legal protection afforded suspects, and the consistent application of the law. In particular, the lack of uniformity of the application of the law by judges, particularly related to controlled delivery, further emphasizes the need for clear legislative guidelines and standardized procedural rules to ensure greater clarity and reliability of evidence.

In total, this study has provided a sector specific, empirically and legally grounded, evaluation of the use of covert investigative (search) action in Customs administrations. Through combining empirical data with comparative legal analyses, the study has provided a basis for developing procedural harmonization guidelines, supported

the development of evidence based reforms to investigative practices, and helped to align national criminal procedure with EU legal principles. Ultimately, the findings of this study can provide a basis for improving the effectiveness, legitimacy, and cross border applicability of investigations of economic crimes related to Customs.

## Abbreviations

BESU: Bureau of Economic Security of Ukraine, CEPEJ: European Commission for the Efficiency of Justice, CI(S)A: Covert Investigative (Search) Actions CPC – Criminal Procedure Code of Ukraine, EU: European Union, GRECO: Group of States against Corruption, PGO: Prosecutor General's Office, SBI: State Bureau of Investigation.

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## Author Contributions

All authors contributed equally.

## Conflict of Interest

Authors declare that they do not have any financial or personal conflict(s) of interest that would influence the research that is contained within this article.

## Declaration of Artificial Intelligence (AI) Assistance

Authors utilized generative artificial intelligence (ChatGPT) for language refinement; format modification; and structural editing purposes only. All legal analyses; data interpretations; and original content were developed by authors without AI involvement. Authors reviewed and verified all AI assisted development to confirm accuracy; maintain integrity; and adhere to all applicable academic and ethical standards.

## Ethics Approval

All of the processes that were carried out as part of this study were carried out in compliance with the Criminal Procedure Code of Ukraine and the relevant laws of Ukraine at a national level. The study was based solely on anonymized case documentation and publically available legal documentation. No individual level personal data or sensitive/ classified operational information was used. Formal Ethics approval was not required due to the national legislation regulating the use of judicial and procedural documents.

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