

The dismissal of the EPPO investigations – case study

An EDP is handling a case of fraud consisting of the evasion of customs duties committed through a series of false statements to official persons. The alleged criminal offences are fraud and false statement to official persons. The EDP is dealing also with the latter offence, as it is inextricably linked to the PIF offence (art. 22 para 3 of the EPPO regulation).

Company A is in charge of the import procedures of goods in the EU on behalf of company B. Each year, company A manages the import of 100 tons of goods in the EU, mainly in the port of Rotterdam.

Statistically, it appears that company A declared around two-thirds of the operations as imports of “apples”. One day, during a routine control, the customs official verified that most of the shipment involved garlic, and not apples. The import of apples is subject to much lower duties than garlic. Company A filled in and submitted to the customs authorities several documents confirming that the imported goods were “apples”.

The development of the investigation suggested that company B was not foreign to such a scheme. On the contrary, they were fully aware of it and they were also the main beneficiary.

The managers of companies A and B were therefore charged with fraud and false statement to official persons.

However, the investigation also suggested that, in some cases, single customs officers dealing with the control of some shipments might have been induced to overlook the fraud, in exchange for illicit rewards. Therefore, the managers of the companies A and B and the customs officers involved were also charged with bribery detrimental to the EU financial interests.

When the investigation was about to be completed, it also turned out that an administrative investigation was opened by the Dutch Customs. It resulted in the suspension from the work of the involved customs officers suspected of misconduct.

Moreover, the EDP became aware that one of the suspects, the manager of company B, died suddenly due to a car accident.

As for the manager of the company A, he is a Dutch citizen that appears to be “honorary consul” of Pakistan in the city of Rotterdam.

Q1. How can the investigation continue?

Q2. Is the EDP going to propose the dismissal of the case?

A2. Certainly he has to dismiss the case in respect of the suspect who died

Q3. How shall the EDP dismiss the case?

A2. He will send a report with the proposal of dismissal to the EP; the EP shall forward them to the Permanent Chamber that will instruct the EDP to dismiss the case

With regard to the suspect “honorary consul”, it is true that one of the reasons for dismissal is that the suspect was granted immunity. The issue is therefore whether an “honorary consul” enjoys immunity.

In principle it is not like that, as an honorary consul is a professional diplomat, but in case the EDP should request to lift the immunity under the national law

We assume that no immunity had to be lifted but the EDP didn't find sufficient evidence to prosecute the manager of company A.

Q4. Can he dismiss the case on those grounds?

A4. The lack of relevant evidence is one of the grounds for dismissal under the regulation, but its meaning is shaped according to the national law. The regulation does not say when the evidence is lacking.

In some systems it requires dismissal when the evidence is not strong enough to successfully support the prosecution. In other systems this degree of evidence could be sufficient to prosecute the case, as the dismissal is justified only when no evidence has been reached.

Regarding the customs officers, they were subject to and heavily sanctioned in a parallel administrative procedure.

The regulation provides the case that the suspect's case has been finally disposed in relation to the same acts as a grounds to dismiss.

Q5. Is the administrative proceedings a reason for the dismissal of the criminal case?

A5. This is the problem of the “ne bis in idem”, which has to be seen under the case law of the ECHR and of the CoJ. In a nutshell, the most recent developments on this principle suggest that when the sanctionary reaction of the State to the misconduct is homogeneous, there is no violation of ne bis in idem even in case of double proceedings.

Therefore, it has to be seen in the specific case how the administrative proceedings was started and developed.

However, when administrative proceedings are in essence disciplinary proceedings, the case law tends to exclude any violation of the ne bis in idem principle in case of double proceedings, as disciplinary proceedings pursue a completely different goal compared to the criminal proceedings; they work on two different levels,

Q6. We assume that still the EDP has been instructed to dismiss the case. In this specific situation, is there any obligation for the EPPO?

A6. As in this case the EDP has also handled a non-PIF offence, which has been included in the investigation as inextricably linked to the main PIF offences, under the regulation the case can be dismissed only after consultation with the national judicial authorities, to which the case could be theoretically referred.

Q7. Is the EPPO also obliged to refer the case to OLAF after the dismissal?

A7. The EPPO may refer to OLAF for the administrative and financial follow up.