

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 importation 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 importation 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 the 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 company 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 of illicit rewards. Therefore, the managers of the company A and B and the involved customs officers were also charged with bribery detrimental to the EU financial interests.

When the investigation was about to be completed, it turned out that also 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 the company B, died suddenly due to a car accident.

As for the manager of 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?

Q3. How shall the EDP 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 a “honorary consul” enjoys immunity.

In principle it is not like that, as a 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?

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

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

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

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

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