



# European Public Prosecutor's Office ("EPPO")

Olivia Ewenike, Munich

ECBA Autumn Conference Malta

14th - 15th of October 2022



# OUTLINE

- I. Case
- II. Competence of the European Delegated Prosecutor
- III. Competence complaint

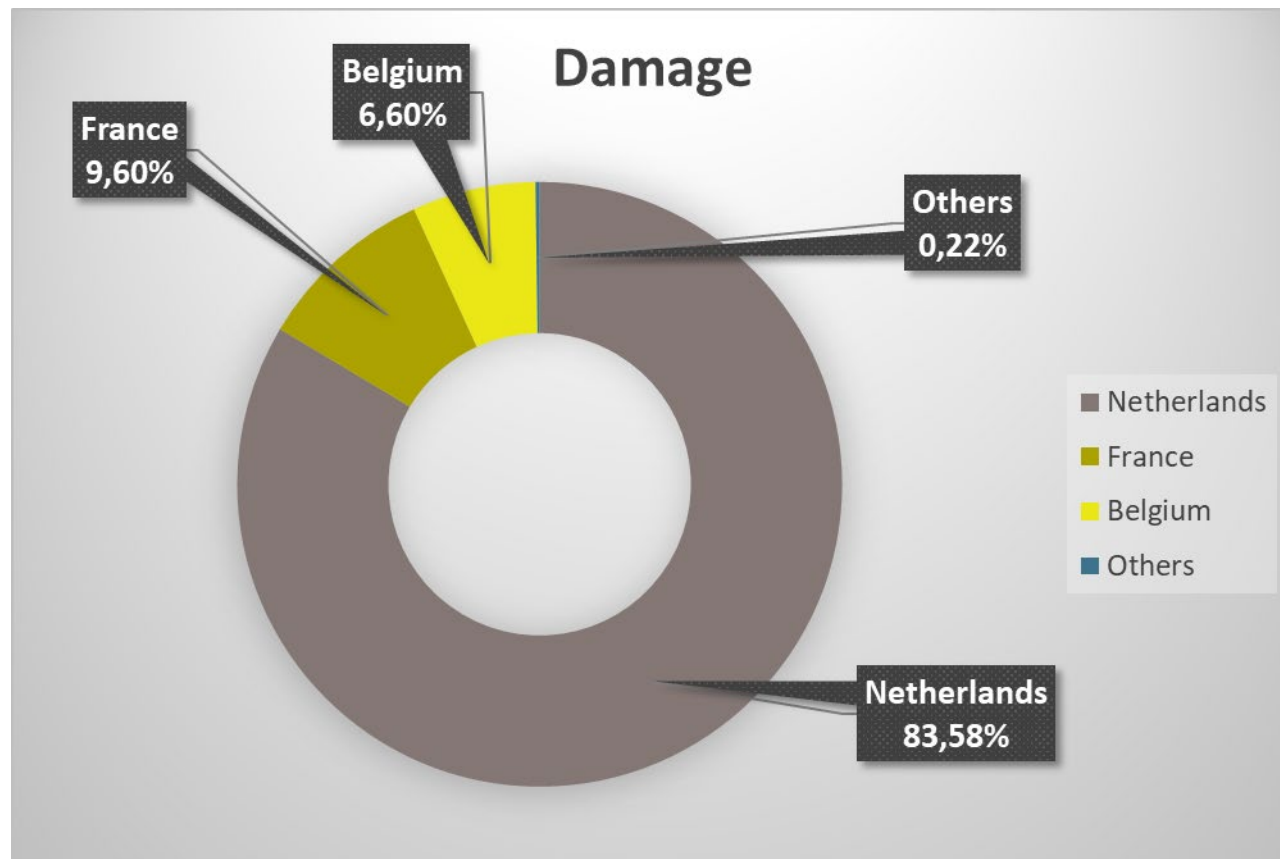


## I. Case

## START OF PROCEEDINGS

- **Sept/Oct 2019:**
  - Investigations by the European Anti-Fraud Office (OLAF - Office de Lutte Anti-Fraude).
  - Suspicion of evasion of anti-dumping duties and import VAT into the EU from a third country (USA > Bosnia-Herzegovina > EU)
  - Suspected damage within the EU: EUR 70,000,000.00.
  - Involvement of companies from the Netherlands, USA and Bosnia and Herzegovina.
- **Jul 2020** → OLAF informs Member States („MS“) on investigation findings.
- **Dec 2020** → Final OLAF Report:
  - Damage in Europe in the field of customs duties, compensation duties and anti-dumping duties in the amount of EUR 67,587,444.00.
  - Majority of offences in the Netherlands.
  - Majority of the damage to be gathered in the Netherlands (EUR 39.8M).
  - Other countries: France (EUR 4.5M), Belgium (EUR 3.2M), Italy (EUR 1.8M), Germany (EUR 1.5M), Austria (EUR 700K), Slovenia (EUR 90K) and Croatia (EUR 11K).
  - Handling of the individual countries with this information: unknown!

## FISCAL DAMAGE



## EUROPEAN DELEGATED PROSECUTOR IN GERMANY

- **From mid-2021:**
  - "Preliminary investigations" by the German Customs Investigation Office on the basis of the OLAF investigations.
  - Submission by German Customs Investigation Office in June 2021 with the suggestion of an evaluation for taking over the proceedings by the European Public Prosecutor's Office ("EPPO") in Germany.
  - Initiation decision of June 2021 by the European Delegated Prosecutor ("EDP") on the basis of alleged participation in a criminal organization.



## II. Competence of the German EDP?

## DELEGATED EUROPEAN PUBLIC PROSECUTOR

- The material competence might be not objectionable due to the assumption of a criminal organization according to Art. 22 (1), (2) of Regulation (EU) 2017/1939. However, the question is which EDP has territorial competence?
- Competence of the Delegated European Public Prosecutor (Art. 26(4) of Regulation (EU) 2017/1939):
  - MS in which the majority of the offences were committed.
  - MS in which the focus of the criminal activity is located.
- Exception:
  - Habitual residence of the defendant.
  - Nationality of the defendant.
  - Place where the main financial damage occurred.



## DELEGATED EUROPEAN PUBLIC PROSECUTOR

- In this case:
  - Majority of the alleged offenses are not located in Germany.
  - Focus of the criminal act is not in Germany.
  - No exceptional circumstances apply:
    - Suspect's or defendant's habitual place of residence → Majority of defendants not from Germany.
    - Nationality of suspects → Majority are not German.
    - Place where the main financial damage occurred → not in Germany.
- No justification for the competence of the German EDP.

## EPP0-Annual-Report 2021

## NETHERLANDS



DATA VALID ON 31 DECEMBER 2021

## Operational activity



## Received reports/complaints

From national authorities	8
From EU institutions, bodies, organisations and agencies	2
From private parties	0
Ex officio	0
<b>TOTAL</b>	<b>10</b>

## Opened investigations

Initiate investigation (new case)	4
Evoke investigation (old case)	0
<b>TOTAL</b>	<b>4</b>

## Exercise of competence

Decision pending	0
Decision to exercise competence	4
Decision not to exercise competence	6
Referral to national authorities (where competence was exercised)	0

European Delegated Prosecutors (active): 2

## Dismissed cases

Death or winding up	0
Insanity	0
Amnesty	0
Immunity	0
Expiry of statutory limitation to prosecute	0
Case has already been finally disposed of	0
Lack of relevant evidence	0
<b>TOTAL</b>	<b>0</b>



National European Delegated Prosecutors' Assistants: 4

## POSSIBLE DECISIONS BY THE PERMANENT CHAMBER

- Before deciding to bring a case to judgment, the competent Permanent Chamber may decide (Art. 36 of Regulation (EU) 2017/1939)
  - to reassign proceedings,
  - to join or separate cases and
  - to choose the Delegated European Public Prosecutor responsible for handling each case (Art. 26(5) of Regulation (EU) 2017/1939).



## IV. Competence complaint ?

## REVIEW OF COMPETENCE?

- Applications to the Permanent Chamber:
  - Competence complaint.
  - Application for notice of composition.
  - Application for a hearing before a decision of the Permanent Chamber.
  - Application for disclosure of investigative acts in other MS.
- Decision → Rejection:

*"Your submission with the requests contained therein was forwarded to the Permanent Chamber responsible for the proceedings. After reviewing the factual and legal situation, no reason was seen from there to reallocate the proceedings. It was also taken into account that the initial combination of the proceedings from Austria and Germany in the proceedings conducted in Munich was based on a decision by the competent chamber and that no aspects have arisen that would suggest a reassessment."*

## REVIEW OF COMPETENCE??

### Problem:

- No direct access to the permanent chamber.
- No transparency regarding the composition of the permanent chamber.
- No response from the permanent chamber. The EDP responds.
- No hearing on the decisions of the Permanent Chamber.
- Complete lack of transparency regarding decisions of the Permanent Chambers to initiate pre-trial proceedings, allocation of competence to a Delegated European Public Prosecutor ect.



Thank you for your attention!