



EUROPEAN  
PUBLIC  
PROSECUTOR'S  
OFFICE

**NADAL 2024**

**Challenges in the fight  
against EU fraud:**

**The EDP Perspective**

(Claude Eischen, European Delegated Prosecutor, Luxembourg)

**Protecting EU  
taxpayers' money  
from criminals**



1

# Insights into the Work of a European Delegated Prosecutor (“EDP”)

## EUROPEAN DELEGATED PROSECUTORS:

- ❑ Active members of judiciary but independent from the national authorities.
- ❑ Act on behalf of the EPPO in their respective Member States under the supervision of the European Prosecutor, subject to the instructions of the Permanent Chamber and shall have the same powers as national prosecutors.
- ❑ Verify the information, exercise the competence, conduct the investigations, propose a decision to the PC and take any follow-up actions (bring a case to Court, dismiss the case, etc...).
- ❑ Responsible for bringing a case to judgment, in particular have the power to present trial pleas, participate in taking evidence and exercise the available remedies **in accordance with national law** (until the case has finally been disposed of).



# EUROPEAN DELEGATED PROSECUTORS

Active  
number of  
European  
Delegated  
Prosecutors:  
149  
24/04/2024



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# INVESTIGATIONS: HOW IT WORKS



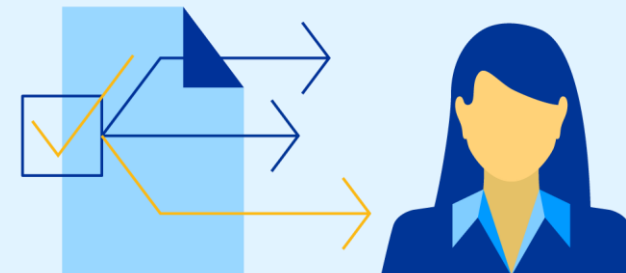
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Information comes to the EPPO:

- From private parties via Report a Crime web form
- From national authorities

2



Verification and registration in digital **Case Management System** and assigned to a European Delegated Prosecutor.

3



Verification phase of 60 days, if investigation opened, EDP investigates from start to finish

- Supported by EPPO operations and national authorities
- Cross-border investigation, EIO, MLA
- **Supervision by European prosecutor** and monitoring by a **Permanent Chamber in**

4



Case is tried **before the national courts**, with the possibility for the Courts to refer a **preliminary ruling to the CJEU**.



A nighttime photograph of a city street. In the foreground, several police cars with flashing blue and red lights are visible. In the background, a large, ornate building with arched windows is illuminated. The scene is partially obscured by a large blue and green gradient overlay.

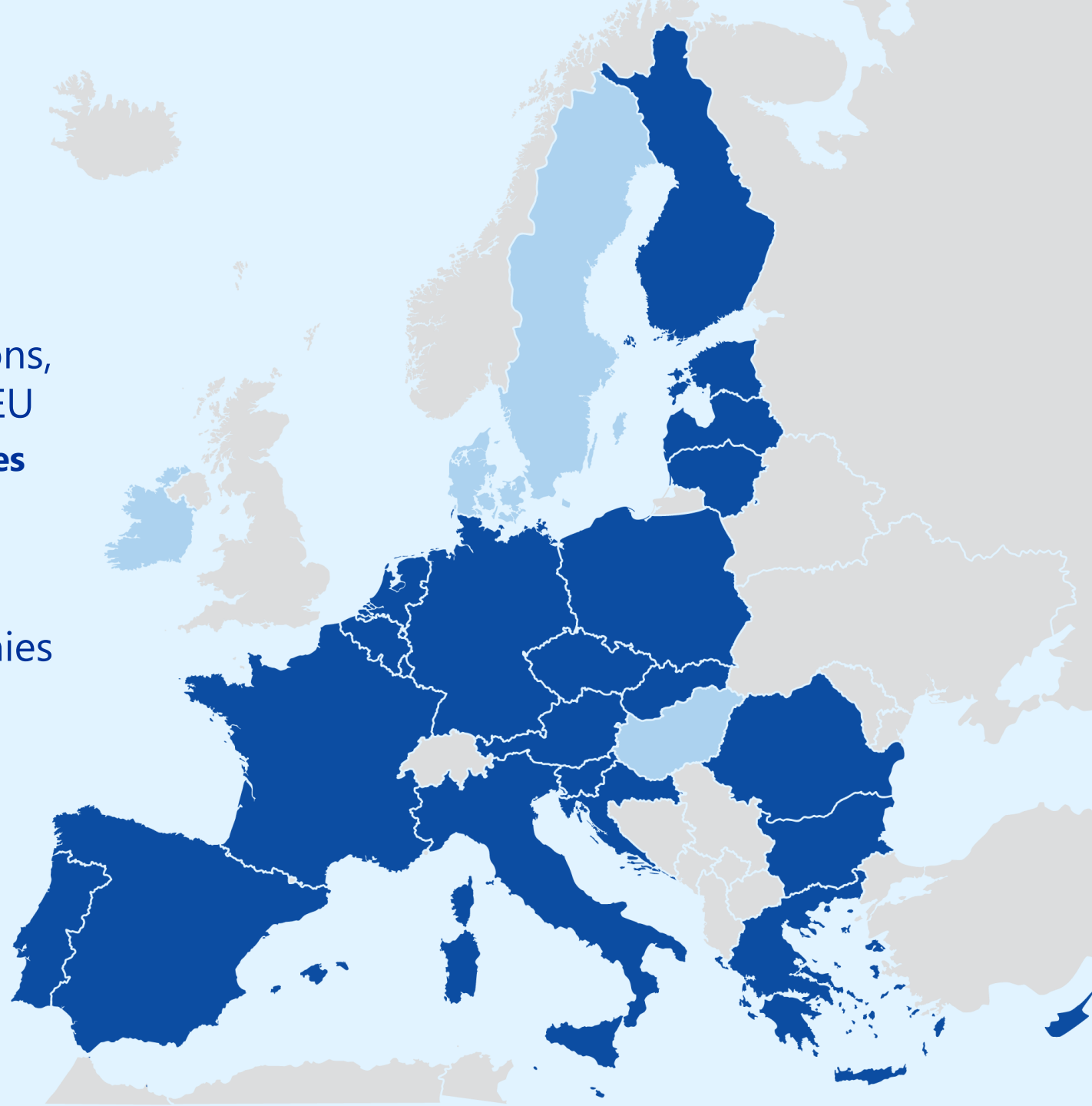
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“... it comes with the territory”

**Specific aspects of the work of an  
EDP in Luxembourg**

# Territorial competence:

- 14.000 EU civil servants in Luxembourg
- Headquarters of a number of EU institutions, including the EIB, the lending arm of the EU
  - **Impact on number of «national» EPPO files**
- International Financial Centre
- EU Headquarters for a number of companies that have an interest for Law Enforcement Agencies (ex: Amazon, Paypal, etc...)
  - **Impact on number of incoming «cross-border» EPPO files**





3

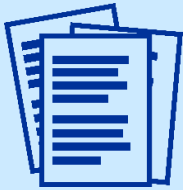
## Challenges faced in the cooperation with the Member States

**Focus on the cross-border  
cooperation among EPPO-States**



# Cross-border investigation: how it works

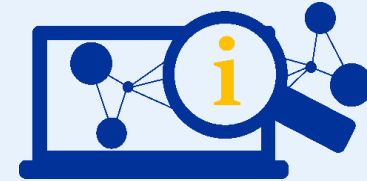
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**EDP identifies the need for an investigative measure in a different Member State (MS)**

- EDP informs competent European Prosecutor (EP)
- Electronic transmission of the assignment

2



**Allocation by the EP of the execution of the measure via the CMS to an assisting EDP of his/her MS**

3



**Assisting EDP executes the requested measure**

- Close and timely coordination between EDPs
- Execution following national rules
- Direct execution or execution via a national authority

4



**Requesting EDP receives the “results”**

- Direct communication between the EDP's Offices
- Constant communication on the results of the measure
- Results directly usable as evidence in front of a Court

# EPPOs approach to cross-border investigations



- The **practical application** of Article 31 **cannot be more cumbersome than** the application of the Union acts giving effect to the **principle of mutual recognition**.
- Article 31 mirrors the principle that the **substantive reasons and conditions for adopting** any intra-EU cross-border measures **can be challenged only in the Member State of the handling EDP**.
- The **competent court of the assisting EDP should** not require more supporting evidence and **not assess the “justification” and the “substantive reasons” for undertaking the measure**.



# ECJ Case C-281/22: Summary of the facts



- EPPO investigation in DE **for customs fraud** when **importing biodiesel** into the Union.
- DE handling EDP **assigned** certain **search measures** to an assisting EDP in AT **without obtaining prior judicial authorization**.
- A judicial authorisation is necessary under AT law, which was granted by the Austrian regional courts.
- The concerned persons **lodged appeals** against the authorisation granted by the first-instance AT courts, contesting the merits of the authorisation, claiming, in essence, that the facts for which the searches were ordered did not amount to a criminal offence or there was at least a grossly inadequate justification for the measures.





# The questions posed to the ECJ

*Must EU law, in particular the first subparagraph of Article 31(3) and Article 32 of [Regulation 2017/1939], be interpreted as meaning that, in the case of cross-border investigations in the event that a court must approve a measure to be carried out in the Member State of the assisting European Delegated Prosecutor, **all material aspects, such as criminal liability, suspicion of a criminal offence, necessity and proportionality, must be examined?***

*(2) Should the examination take into account whether the admissibility of the measure has already been examined by a court in the Member State of the European Delegated Prosecutor handling the case on the basis of the law of that Member State?*

*(3) In the event that the first question is answered in the negative and/or the second question in the affirmative, to what extent must a judicial review take place in the Member State of the assisting European Delegated Prosecutor?*



## Judgment of the EUCJ (Grand Chamber) of 21 December 2023, Case C-281/22, G.K. and Others

- ▶ **Landmark case resolving one legal issue (the scope of judicial review for Article 31 measures), but also expanding on another one: prior judicial review in the MS of the EDP(h) for measures that constitute a “serious interference” with Charter rights**
  - ❑ The ECJ held that the **review conducted in the MS of the EDP(A) may relate** only to matters concerning the **enforcement of that measure**.
  - ❑ **The substantive reasons for the justification and adoption of the measure must be evaluated solely according to the law of the MS of the EDP(h)**. They may be subject to full judicial scrutiny only in that MS.
  - ❑ The **latter matters must be subject to prior judicial review in the MS of the EDP(h)** in the event of serious interference with the rights of the person concerned guaranteed by the Charter of Fundamental Rights of the European Union.



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