



EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE

The EPPO functioning: a practical overview

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EPPO – MAIN FEATURES

- Entirely new judicial body and system
- Supranational (EU) prosecutor's office, entirely independent from the European and national authorities, including the national prosecutorial and judicial authorities
- Single office with a central and a decentralised level: European Delegated Prosecutors fully members of the EPPO
- Exclusive competence for investigating, prosecuting and bringing to judgment "PIF offences", up the final judgement (until the case has been finally disposed of) – any offence that could affect the financial interest of the EU
- Within the 22 Member States participating in the EPPO, as a rule the tools of the judicial cooperation between prosecutor's offices are not applicable – direct execution

Legal basis

- Article 86 Treaty on the Functioning of the European Union: the EPPO shall exercise the functions of prosecutor in the competent courts of the Member States
- EPPO Regulation (EU)2017/1939
- PIF Directive(EU) 2017/1371
- Italy: D.L.vo 9/2021 in force since 6.2.2021, already amended by D.L. 17/2022 (GU 1.3.2022)

Legal basis

Art. 34 D.L. 17/2022 entered into force on 2 March 2022

- Introduces two European Delegated Prosecutors at General Prosecutor's Office level, to exercise functions before the Court of Cassation – protection of legality
- Fine tuning of the flow of information on the disciplinary procedure in respect of the EDPs
- Pension Contributions

How it works: the College

- Chaired by the European Chief Prosecutor
- One European Prosecutor per participating EU member state
- Takes decisions on strategic matters, including determining the priorities and the investigation and prosecution policy of the EPPO



How it works: the Permanent Chambers

- Monitor and direct the investigations and prosecutions: decision making powers
- Collegial organ: novelty for a prosecution office
- 15 Permanent Chambers: 3 European Prosecutors in each PC + the supervising EP
- Cases are allocated randomly and automatically
- Cases handled in a Member State are not allocated to the Permanent Chamber the supervising prosecutor from that MS is a permanent member of



How it works: the supervising European Prosecutor


- Shall supervise the investigations and prosecutions for which the EDP handling the case in their Member State of origin are responsible
- Present summaries of the cases to the PC and proposals for decisions to be taken by the PC, on the basis of draft decisions prepared by the EDP
- May give instructions to the handling EDP for the efficient handling of the investigation or prosecution or in the interest of justice, or to ensure the coherent functioning of the EPPO
- In exceptional cases, may take a reasoned decision to conduct the investigation personally

EPPO: European prosecutors



How it works: the decentralised level

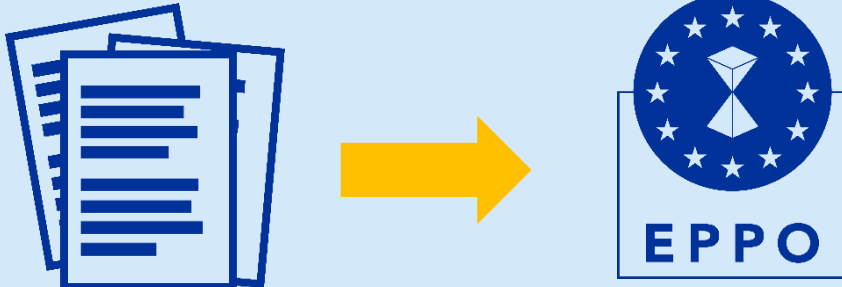
- Up to 140 European Delegated Prosecutors (EDPs) in charge of EPPO investigations (currently 103)
- Fully part of the EPPO – proposed by the Member States by appointed by the College, hired and paid by the EPPO
- Full independence from their national authorities
- Operationally integrated into the prosecution service of the Member States
- Supporting staff and resources at decentralised

 Active number of EDPs



How it works: Investigations

1



Information comes to EPPO

- From private parties: Report a Crime web form
- From national authorities
- From EU agencies (OLAF, EUROPOL, EIB etc.)
- Any other source or ex officio

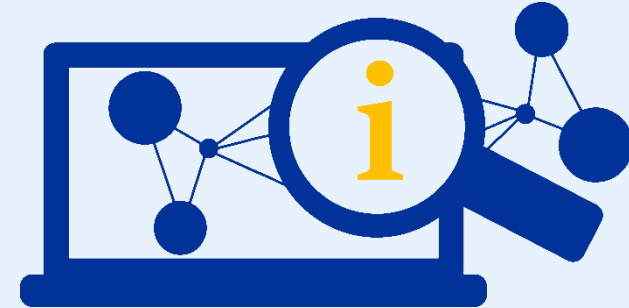
3



If opened, EDP investigates from start to finish

- Supported by EPPO financial investigators and case analysts
- Supported by national police, customs, tax services...
- Supervised by a Permanent Chamber in

2



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

4



Case is tried before the national courts

How it works: Exercising the competence

PIF Directive (UE) 2017/1371 - irrespective of the legal qualification - Article 3(2):

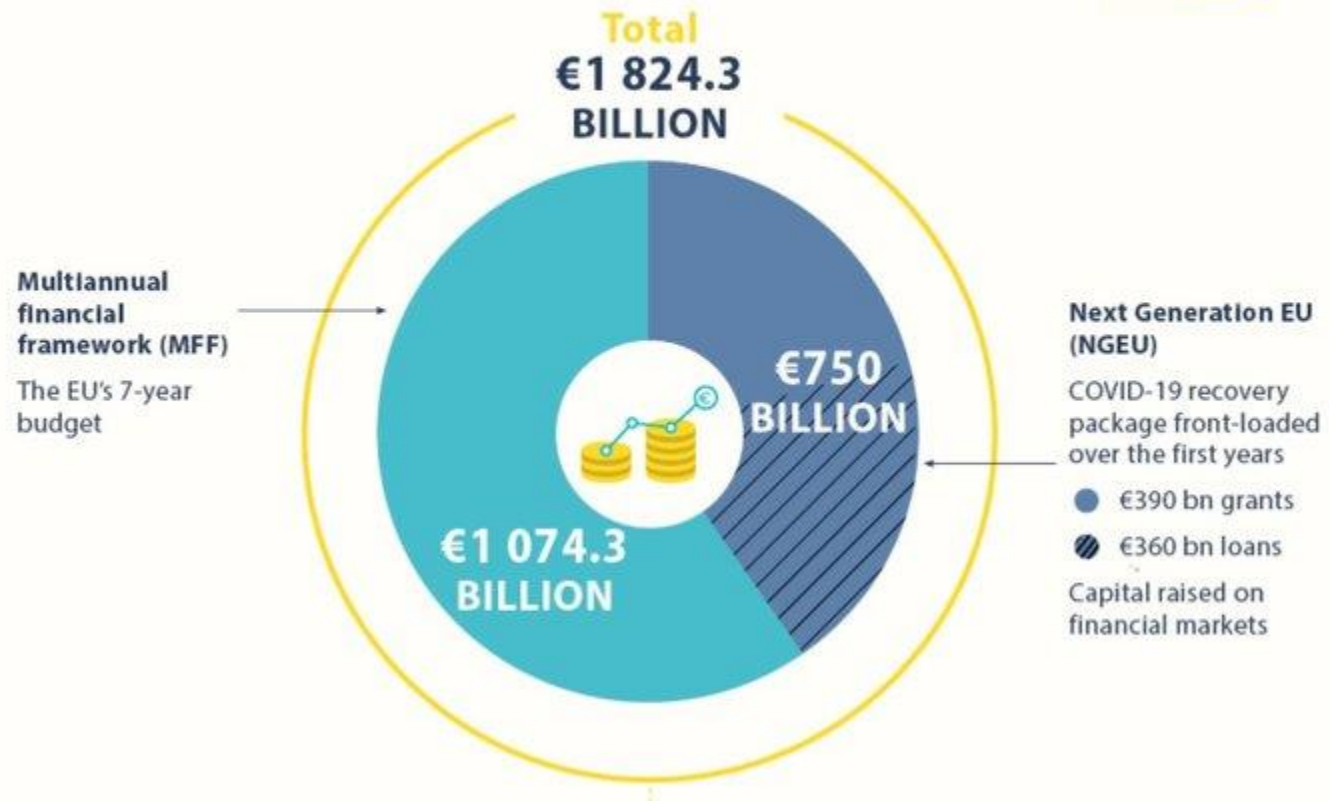
- a) in respect of expenditure - non-procurement-related
- b) in respect of expenditure - procurement-related
- c) in respect of revenue (own resources) - other than VAT
- d) in respect of revenue arising from VAT own resources - acts or omissions connected with the territory of two or more Member States and involve a total damage of at least EUR 10 million (art. 22(1) Reg. EPPO)

Exercising the competence: expenditures

Identifying the source

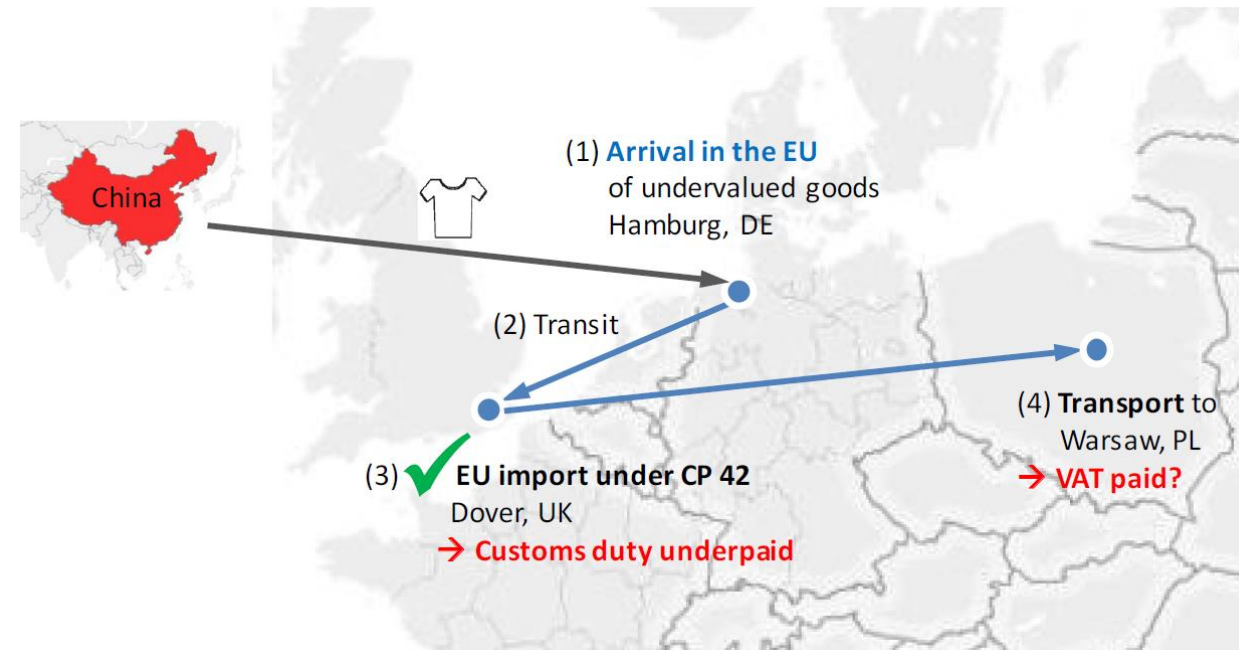
- Direct management: EU funding is managed directly by the European Commission
- Shared management: the European Commission and national authorities jointly manage the funding
- Indirect management: funding is managed by partner organisations or other authorities inside or outside the EU

Overall budget 2021-2027



Exercising the competence: revenues – VAT frauds

- ❑ VAT MTIC (Missing Trader Intra Community) fraud - carousel frauds
- ❑ Import VAT frauds (undervalued goods, abuse of temporary admission)
- ❑ Custom frauds abusing Custom Procedure 42 - regime used in order to obtain a VAT exemption when the imported goods will be transported to another Member State, where VAT will be due



Exercising the competence: revenues – smuggling

European Union Customs Union (EUCU)

- ❑ Custom fees – EU exclusive own resources
- ❑ Import VAT
- ❑ Excises

CUSTOMS UNION

in Numbers 2020



Smuggling: only case where the criterion of the highest damage caused by a single offence applies – EPPO can exercise the competence with the consent of the national authorities

Exercising the competence: inextricably interlinked offences

Recital 54 Regulation: case-law UE CoJ for the application of the *ne bis in idem* principle - identity of the material facts (or facts which are substantially the same), understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together in time and space

EPPO Guidelines:

- ❑ *Ne bis in idem*
- ❑ Offences were committed by means of the same material activity and driven by the same intent
- ❑ Set of facts composing those offences was carried out as parts of the execution of the same criminal plan in order to achieve the same common goal
- ❑ Offences linked in time, in space and by subject matter, making up an inseparable whole
- ❑ When a separate investigation, prosecution or adjudication of the offences in different proceedings would artificially split up the series of events that form the natural process of action

Exercising the competence: instrumental offences

Basic rules

- EPPO competent when the offence affecting the Union's financial interests is preponderant, in terms of the seriousness of the offence concerned, as reflected in the maximum sanctions that could be imposed
- EPPO competent anyhow when the non-PIF offence is instrumental to the offence affecting the financial interests of the Union

Recital 56 Regulation - instrumentality:

- where such other offence has been committed for the main purpose of creating the conditions to commit the offence affecting the financial interests of the Union
- where such as an offence strictly aimed at ensuring the material or legal means to commit the offence affecting the financial interests of the Union, or
- to ensure the profit or product thereof

Exercising the competence

EPPO Guidelines

- **Organised crime:** When the unlawful activity of the criminal organisation is equally addressed at diverse areas and if the purpose of committing one or more of the offences referred to in Article 22(1) concurs with the intent of committing other offences
- **Money laundering:** when it involves both property derived from offences referred to in Article 22(1) and from any other criminal offences

DECISION OF THE COLLEGE OF THE
EUROPEAN PUBLIC PROSECUTOR'S OFFICE
OF 21 APRIL 2021

ADOPTING OPERATIONAL GUIDELINES ON INVESTIGATION,
EVOCATION POLICY AND REFERRAL OF CASES

How it works: Allocation Rule to the MS

In principle: one only EPPO case

When more than one MS has jurisdiction, the case is allocated to the MS where the focus of the criminal activity is or where the bulk of the offences has been committed (additional criteria for possible deviation)

- Autonomous legal concept of EU Law– art. 26(4)
- Procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties shall be subject to review by the competent national courts (recital 88 and Article 42)
- Procedural acts that relate to the choice of the Member State whose courts will be competent to hear the prosecution are subject to judicial review by national courts, at the latest at the trial stage (recital 87)
- Natural judge principle
- Possible negative conflict between national judges on the allocation: jurisdiction of the Court of Justice pursuant to Article 42(2)(b)??

How it works: cross-border investigation

Investigation measures – Principles Article 31

- Acting as a single office, not as external cooperation
- EDPs acting in close cooperation by assisting and regularly consulting each other
- Immediate involvement of the central level
- Assignment of investigation measures:
 - Handling EDP assign the measure to a EDP located in the Member State where the measure needs to be carried out
 - Immediate information to the supervising EP
 - Justification and adoption of such measures governed by the law of the handling EDP
 - The assisting EDP shall undertake the assigned measure

How it works: cross-border investigation

Investigation measures

Judicial Authorisation Article 31

- In the Member State of the assisting EDP, if required
- Where the law of the Member State of the assisting EDP does not require it, but the law of the Member State of the handling EDP requires it, the authorisation shall be obtained by the latter EDP
- Only one judicial authorisation

Incompatible with the fundamental rights of the parties and with the right to legal remedies in the Member State where the case is handled – highly inefficient

EPPO Guidelines:

- The authorisation shall always be issued or obtained in the MS of the handling EDP
- In the MS of the assisting EDP, the authorisation shall be obtain if required, but based on the substantive reasons (justification and adoption) of the MS of the handling EDP

How it works: cross-border investigation

Investigation measures

Enforcement and execution – Article 32

- Law of the Member State of the assisting EDP applies
- Formalities and procedures indicated by the handling EDP shall be complied with unless contrary to the fundamental principles of law of the MS of the assisting EDP
- Evidence: admission shall not be denied on the mere ground that it was gathered in another MS or in accordance with the law of another MS

Articles 99 to 105

Cooperation and working agreements with EU partners Non participating Member States Third countries International Organisations





Europol

- Working arrangement
- Exchange of information
- Hit/No Hit mechanism



EU Anti-Fraud Office (OLAF)

- Working arrangement
- Avoid duplication
- Maximise recovery of damages
- Support



Eurojust

- Working arrangement
- Judicial cooperation requests
- Non-participating Member States and third countries



National authorities (non-exhaustive)

- Prosecutor generals
- (Specialised) Prosecution offices
- Police
- Customs

Crime reporting at 31 January 2022

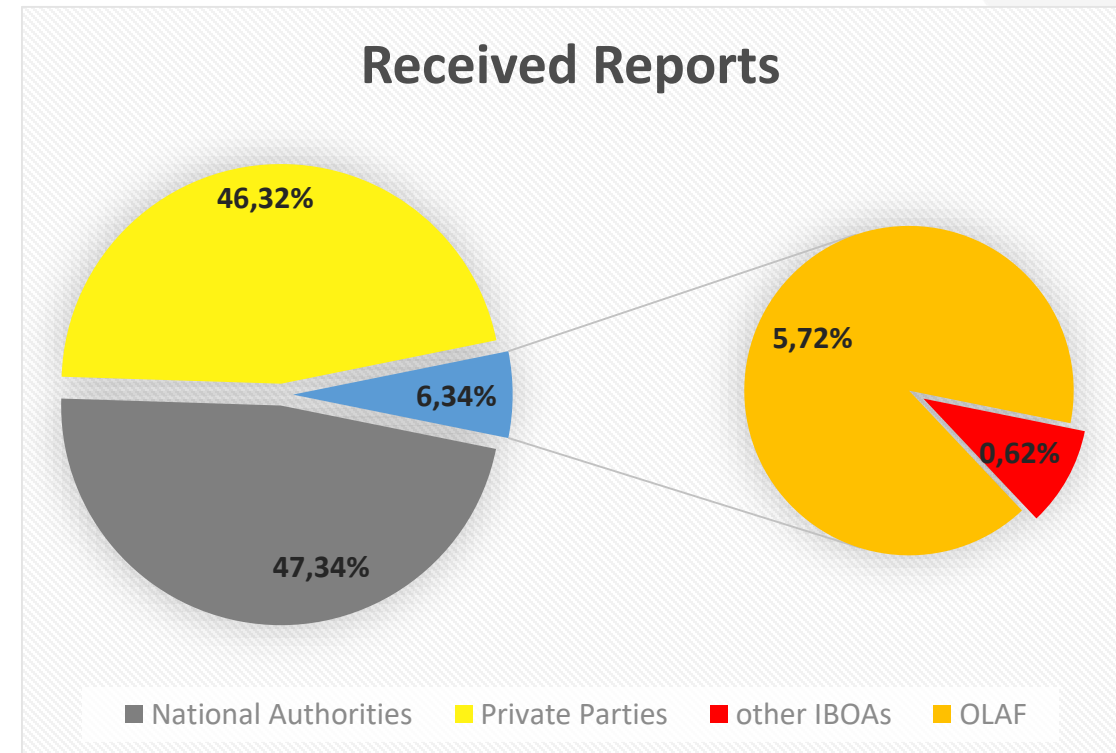
Registration Cases opened <i>ex officio</i>	Investigative Cases opened
9	2

ECRs received from national authorities	Registration Cases opened	Investigative Cases opened
1449	1449	506

ECRs received from IBOAs	Registration Cases opened	Investigative Cases opened
194	194	92

Private parties reports directed to the Central Office	Registration Cases opened	Investigative Cases opened
1418	71	21

Total	3061	1723	621
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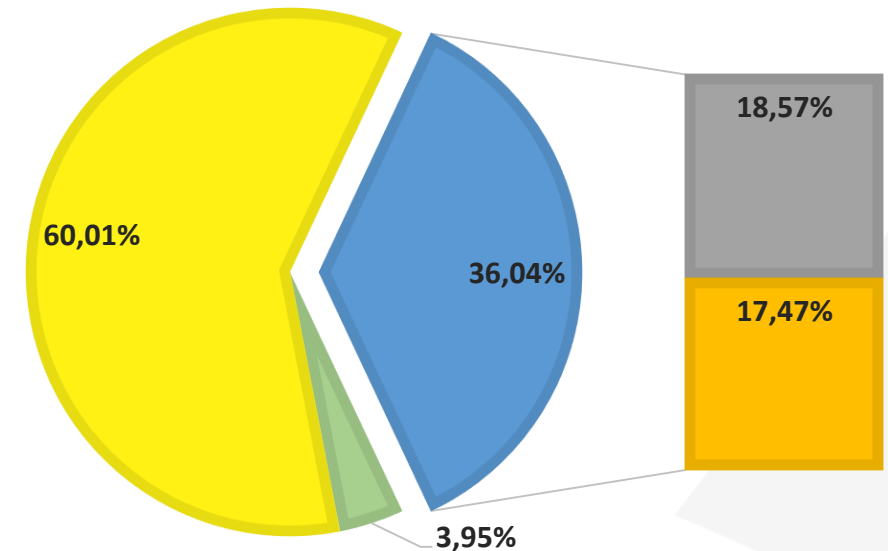


Exercise of the EPPO's competence at 31 January 2022

Case Type	Registered Cases	Opened investigations	Active investigations
Initiate Investigation	688	320	294
Evoke Investigation	1035	301	268
Total	1723	621	562

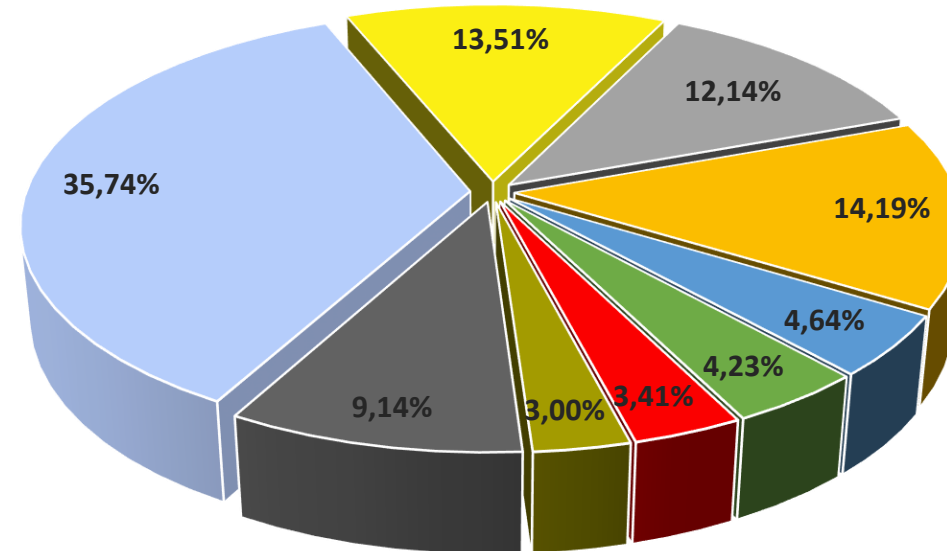
EPPO REGISTERED CASES

- Cases where a EPPO decision is pending
- Cases where EPPO did not exercise competence
- Cases where EPPO initiated investigation
- Cases evoked by EPPO



Types of investigated offences at 31 January 2022

Number of active cases broken down by investigated offences	
Non-procurement fraud	262
Procurement fraud	99
Fraud (non-VAT revenue)	104
Fraud (VAT revenue)	89
Participation in PIF-focused CO	22
Corruption	34
Misappropriation	31
Money laundering	25
Inextricably linked offences	67



- Non-procurement fraud
- Procurement fraud
- Fraud (VAT revenue)
- Fraud (non-VAT revenue)
- Corruption
- Misappropriation
- Money laundering
- Participation in PIF-focused CO
- Inextricably linked offences

Estimated damages in all active investigations

June 2021	July 2021	August 2021	September 2021	October 2021	November 2021	December 2021	January 2022	Total	
								Active cases	Estimated damages
1,007,295,427	2,123,328,438	482,819,758	240,507,436	498,798,292	237,019,696	608,017,601	127,898,829	562	5,325,685,481

Estimated damages in active VAT fraud investigations

June 2021	July 2021	August 2021	September 2021	October 2021	November 2021	December 2021	January 2022	Total	
								Active cases	Estimated damages
422,027,659	857,142,353	118,275,070	123,651,475	239,342,827	150,999,967	466,526,628	60,681,447	85	2,438,647,428.91

Grazie per l'attenzione



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