Deliverable 5

The protection of the EU financial interest in contemporary age: insights from National and European institutions

Aldo Sandulli, Elisabetta Tatì, Alessandro Nato, Valerio Bontempi, Maciej Serowaniec, Eva Rulands, Rossella Sabia, Emanuele Birritteri

The BETKOSOL project (Grant Agreement (GA) No: 101015421) was funded by the European Union HERCULE III programme

DISCLAIMER
This BETKOSOL project was funded by the European Union HERCULE III programme under Grant Agreement no. 101015421. The information in this deliverable reflects only the authors' views and the European Union is not liable for any use that may be made of the information contained therein.

DISSEMINATION LEVEL
Public

Project:	BETKOSOL – Better Knowledge for Better Solutions
GA:	101015421
HERCULE III:	HERCULE 2020
Funding Scheme:	Cofunding

The protection of the EU financial interest in contemporary age: insights from National and European institutions

Work Package 3 - Deliverable 5

Due date:	30.4.2022
Submission date:	24.04.2022
Lead beneficiary:	LUISS University
Authors:	Aldo Sandulli, Elisabetta Tatì, Alessandro Nato, Valerio Bontempi, Maciej Serowaniec, Eva Rulands, Rossella Sabia, Emanuele Birritteri

Table of contents

1. Introduction and presentation of the survey

The pandemic has shown that offers of financial support are sometimes abused by individuals in an emergency. This affects not only those in immediate need, but also the interests of all taxpayers. The European Union is also involved in many projects in the Member States (MSs) and the Next Generation EU has increased this process. The BETKOSOL project aims to study how the financial interests of the European Union are protected in the individual Member States and, in particular, in Italy, Poland, Belgium, and Germany. In this context, the level of knowledge and awareness of potential institutions is of great interest. For this reason, deliverable D4 aims to examine the concrete practices of MS and European institutions through empirical research. Furthermore, this empirical research also concerns some relevant target groups for understanding what perception of the protection of financial interest is present in civil society.

From September 1, 2021, to November 30, 2021, the BETKOSOL team administered online questionnaires to students and conducted qualitative interviews, during online and physical sessions with EU and MS institutions at national, regional, and local level in the four different countries. The BETKOSOL team has administered the questionnaires as well as to selected trade unions and employers' associations in the above-mentioned four countries.

Empirical evidence supporting the herein developed argument derived from the nature of qualitative experts' assessment, whose contents has been collected through a standardised frame close to the one that is used for structured or semi-structured interviews.

The added value of this methodology is twofold. On the one hand, experts responding to the standardised questionnaire have the possibility to point to the key explaining factors and to put an emphasis on those that they deem of most high impact. On the other hand, the overall evidence offers a very nuanced and articulated view where also the policy narrative and the differential perspectives held by the actors that are situated in the policy arena are mirrored.

The survey was conducted through questionnaires designed based on the results of deliverable D1 BETKOSOL and deliverable D2 BETKOSOL. The questionnaires are structured in three sections: a. background Section, b. general understanding of the phenomenon, c. example-concrete best practises. The interviews were conducted with two methods. The first method, the qualitative one, concerned the European institutions, the institutions of the MS, the employers' associations, and trade unions. The second method, more quantitative oriented, concerned the students at the universities involved. The two methods are better suited to the types of subjects chosen for empirical research. While the qualitative method allows one to receive more quality information from selected subjects, the quantitative method allows one to submit the survey to a greater number of beneficiaries by means of the ease of administration.

This deliverable D. 5 is focused on the comparison of the results of qualitative interviews conducted at the European institutions level and those at the national and civil society levels. After this short presentation, the report is organised in other five sections, which already summarised some cross-cutting topics. In Section No. 2, the interviews are used to challenge the coincidence between the European and National protection of the financial interest, letting arise how, on the one hand, there is a certain degree of integration but, on the other hand, differences in standards among countries and inside them remain. Here, the choice of the authors has been not to keep separate the analysis of interviews according to the country. Differently, in the other three following sections, results from each country are taken separately in sub-sections. However, each paragraph has a leading question. In the case of Section No. 3, the authors compare the way in which each country is going towards the protection of the EU financial interest and, hence, if thanks to a stabilisation of the current legal framework or through expected reforms. The first alternative seems to be confirmed, said differently, of an incremental adaptation of the *status quo*. In Section No. 4, the authors work on the main "critical sector" emerged during the interviews and the public procurement one appears to be a common element for at least two countries out of four. In Section No. 5, on the changes during the pandemic, there is a certain ambivalence among countries and interviewees inside the same country. Someone talks about new frauds, someone is aware of new risks of frauds for the future, someone else talks about new techniques

of investigation that arose during the pandemic. Finally, the Section No. 6 is entirely dedicated to giving an insight from EU institutions interviews, with results that in part confirm the position of MSs and in part go beyond them. If a view of the existence of a sort of communicating vessel system between MSs and EU about the protection of the "financial interest" more in general, this is indeed an element that even more proves how the difference between the National and the European financial interest - the core of the theoretical notion and not how the protection is fulfilled - tends to blur as the European integration goes by.

1.1 Acknowledgment

The deliverable was coordinated by Prof. Aldo Sandulli. Dr. Elisabetta Tatì and Dr. Alessandro Nato wrote paragraph 1. Dr. Elisabetta Tatì wrote paragraphs 2, and 6. The Italian part has been written by Dr. Valerio Bontempi (paragraph 3.1), Dr. Rossella Sabia (paragraph 4.1) and Dr. Emanuele Birritteri (paragraph 5.1). The Polish part has been written by Prof. Maciek Serowaniek (paragraph 3.2, 4.2 and 5.2). The Belgian part has been written by Dr. Alessandro Nato (paragraph 3.3, 4.3 and 5.3). The German part has been written by Dr. Eva Rulands (paragraph 3.4, 4.4, and 5.4).

The authors are pleased to thank the referees for their valuable suggestions to finalise the deliverable. In particular, the authors thank Prof. Daniela Piana.

2. European and National protection of the financial interest coincide, however: integration or differences in standards among countries and inside them?

Considering the information collected during the interviews specified in Section 1, questions 1, 2 and 3 for national, regional and civil society groups, the present paragraph deals with the duplicity between the protection of the National and European financial interest.

To begin with, it is relevant to remember how Art. 325, (2) TFEU, provides that, in their activities to combat European frauds, Member States must adopt the same measures in place to combat fraud against their own financial interests (see, for example, the Italian Committee for the Fight Against Community Fraud, (COLAF, answer 1, D4 Databook BETKOSOL). This is, in fact, the so-called principle of assimilation. The latter implies that national authorities must proceed with the same diligence against fraud against EU finances as they do in the execution of their national laws (see section 6 for insights from EU institutions on the point; see also deliverable n. 2, BETKOSOL project, available on the official website, especially 21).

This means that what really counts for most EU resources, hence those managed through shared management, are National legal orders and this is true notwithstanding every country experiments a decisive Europeanisation in the management, for example, of European Structural and Investments funds (ESIFs). Thus, in the deliverable n. 1 of the BETKOSOL project what emerged was a quite high standard of national protection of the financial interest in all the countries under examination. For example, in these jurisdictions the PIF Directive of 2017 had a limited impact, insofar as it pushed those Member States to make sectoral and specific amendments/adaptations, such as the extent of existing sanctions or the list of predicate crimes that can trigger corporate criminal liability. Those legal systems, in short, had a set of criminal provisions largely already in line with the obligations posed by the 2017 Directive.

Even though their abstract convergence, some elements emerged from the interviews give the impression that, at the operative level, there are differences in the way the National and the European financial interests are guaranteed. The phenomenon can have different directions, for example, *in melius* protection of the National interest in comparison with the European one or *viceversa*. It is also possible to point out some peculiarities of each Member State, that confirm only in part the goodness of national systems in the protection of the public financial interest with acceptable European standards. For example, as observed by the Italian anti-corruption agency (ANAC), there is a serious risk of double financing in the country. The main problem the agency detects in the management of national and European public funds is due to the fact that Italy is fragmented in its administrative history, as there are about 30,000 contracting stations and 100,000 cost centres, several of which do not have the necessary expertise to manage public contracts, and this is a great difficulty (ANAC, answer 3, D4 Databook BETKOSOL).

For what concerns Italy more specifically, many interviewees report the parallelism between the EU and the National financial system. Someone has even claimed the stricter protection of the first compared to the second (answer 1 from Fondirigenti's interview, former Director of the Agency for territorial cohesion). However, some people report also, referring to it as a problem, the complexity of the legal framework, both at the national and European levels. The perception is that some obstacles in the fair management of EU resources stem from this intricacy. For example, the reference contact from the Lazio Region observes the complexness of reporting procedures under the ESIFs' management system, even though this could depend on the lack of adequate staff, at least in the local sector (REGIONE LAZIO, answer 3, D4 Databook BETKOSOL). In the case of Roma Capitale, the interviewed reports an articulated system of sources of law, starting from the city's management and control system, continuing with that of the Agency for Territorial Cohesion and the Italian Public Procurement Code (ROMA CAPITALE, answer 2, D4 Databook BETKOSOL). Consequently, difficulties arose in the coordination with national authorities and other local ones (ROMA CAPITALE, answer 3, D4 Databook BETKOSOL). Of course, it can be argued that precisely this rigorous system guarantees transparency in the use of European structural funds, considering that all the operations are 100 percent controlled by first-level controls. Then, also a sample of these operations can be subjected

to second-level or external controls. Indeed, the issue of simplification of controls has been an important point on which attention has been focused in the past. Regulations and guidelines for European funds alone are estimated at more than 5,000 pages. Then, everything is implemented according to national regulations and noticed with the result that the body of regulations is very heavy and irregularities can arise (FONDIRIGENTI, answer 1, D4 Databook BETKOSOL).

From the Italian interviews to target groups emerges another interesting data, especially on the side of the "perception" of the EU financial interest by the entrepreneurial sector. Confindustria reference point observes, in fact, that quite often companies, through their associations, contact Confindustria to be supported in case of proceedings initiated for the recovery of EU resources, e.g. because of suspected illegalities. In these cases, the greatest difficulty is related to making companies understand that there are *ad hoc* regulations in the field and that there are EU financial interests, and not only national ones that must be protected, and thus recovery procedures that must be faced. Hence, Confindustria works to explain to companies that there are rules to be respected and that, if they are not, other related procedures are going to be activated. The association considers this effort an important support activity, also to ensure a smooth collaboration between companies and institutions (CONFINDUSTRIA, answer 3, D4 Databook BETKOSOL). However, it seems that something is changing for the better after the pandemic. Companies have been put in a position to be more aware of how much the Union can not only take, but also give (CONFINDUSTRIA, answer 5, D4 Databook BETKOSOL).

In the case of Poland, people interviewed from all the institutions observe, again, the parallelism between the protection of the European and National financial interest (it is often recalled the Public Finance Act). However, some elements emerge that suggest the reality is quite different. For example, someone remembers how the most important difference between the National and European systems consists in the mechanism of withdrawing money from certification to the EU. This tool fully protects EU financial interests but, from this answer, it is also possible to deduce that, on the one side, the certification is a problematic phase for Poland (as it is, for example, in Italy) and, on the other hand, that the European discipline is much more severe than the national one. The latter point can be derived from the observation according to which it is sufficient to have a suspicion of illegal activities connected with the project to use this procedure from the side of EU services. At the national level, on the contrary, the institution needs serious proof or final judgement in order to retain payments. Differently, there is a risk of compensation proceedings (Ministry of Investment and Development, answer 1, D4 Databook BETKOSOL).

Again, at the level of central institutions and similarly to the Italian observations, the Polish interviews bring out the complexity of the EU legal framework on the management of its resources. Operative problems facing it are reported by the Supreme Audit Office, for example, the lack of coordination among institutions that must be involved in the control activity and the scarcity of human resources available to follow the high number of cases (Supreme Audit Office, answer 3, D4 Databook BETKOSOL; similarly, Regional Chamber of Audit in Bydgoszcz, answer 3, D4 Databook BETKOSOL). At the regional level, one institution has replied to the question on the main difficulties met in the achievement of the protection of the EU financial interest indicating that the quality of project implementation has visibly decreased since beneficiaries are on several different projects at the same time. However, it is not clear if this is a problem of double financing or a drawback of the implementation of the additionality principle, or of the integration among funds and programmes. Then, it is also reported, as an obstacle, the social attitude of beneficiaries toward control procedures. Beneficiaries are, in fact, reluctant to cooperate with controlling institutions and do not treat them as partners in the process of implementing the disbursement of EU funds (Marshall Office of the Kujawsko-Pomorskie Voivodeship, answer 3, D4 Databook BETKOSOL).

The first impression from these partial results is that there appear to be similarities between Italy and Poland, in the sense that European disciplines are perceived as particularly complex and require some extra efforts to combine with national regimes. A minor degree of compenetrating between National and European systems to protect the financial interest is perceivable in the Belgian and the German cases. The systems, here, remain separate and, where necessary, tools available at the national level are considered sufficiently good to fulfil EU obligations.

While in the first two countries the implementation of EU funds management rules is felt as "problematic", with administrative and criminal national consequences (more or less severe, according

to the specificity of the country), in the other two Member States the analysis stem from interviews shows a more pragmatic approach: in the case of EU projects, specific rules (also more, or too, severe) must be followed. If they are implemented correctly, there are no consequences. If they are not - but, in any case, with the impression of a low incidence -, the national repression system will intervene. For instance, in the German case, someone has observed: «There are no concrete obstacles in daily work. Practice shows that the current procedures are effective and that the EU's financial interests are very well protected by the current procedure (close monitoring, strict disbursement practice, extensive management, and control system that goes far beyond the national requirements regarding the certainty of the procedures applied)» (Administrative Authority of the European Social Fund in Bremen, answer 3, D4 Databook BETKOSOL).

Taking examples from Belgium, the Federal Ministry of Justice just observes as the control of the budget about the use of EU subsidies is very strict (Federal Ministry of Justice, answer 2, D4 Databook BETKOSOL), while the Flemish Agency of innovation and entrepreneurship makes a clear distinction between management systems for National and European projects: «Projects financed solely with regional funds must comply exclusively with regional requirements. The Flemish authority shall limit its control to the Flemish requirements. However, given the fact that many projects are financed by the region and the EU, potential difficulties regarding EU funding are transferred to the EU institutions for control. They execute their own audit for the EU part of the funding» (Flemish Agency of innovation and entrepreneurship, answer 2, D4 Databook BETKOSOL). The impression that stems from these words, from "shall limit its control to the Flemish requirements", is that the Belgium control system is much easier than the one required by the EU for its own resources. This impression could be further verified through a comparative analysis, trying to understand if the Belgium system of national controls is simpler and, in case of a positive answer, how: in administrative terms - easiness of procedures - or in criminal ones - fewer controls (see for more details in the following sections and in Deliverable n. 1, BETKOSOL project)? On the same line can be considered also the answers by the Flemish Audit Authority for EU-structural funds to the question if there are differences between the way in which the national and EU financial interests are protected inside the institution. The interviewee explains that the answer is double: «To a certain extent, no, because the focus lies on how EU funding is used at the Flemish level. The Auditors are the same persons and therefore the focus is similar. However, the Eu provides at different levels many different answers to similar questions. This influences the Auditors and complicates their position. They have access to a lot of information but there is too much information for them to deal and comply with (Flemish Audit Authority for EU-structural funds, answer 1, D4 Databook BETKOSOL) ». This is, again, proof of the way in which the National and European tracks remain separate, instead of being complementary.

Other similar answers can be found again in German interviews. For example, the reference contact for the Administrative Authority of the European Social Fund in Bremen (also ESF certifying authority) affirms: «Projects financed solely from state funds must comply exclusively with national requirements, which allow significantly more room for manoeuvre than comparable European requirements. In contrast, the European interests are exceptionally well secured and clearly above average: more closely meshed inspection intervals, a continuous adaptation of the systems, more concrete procedures that allow significantly less room for manoeuvre» (Administrative Authority of the European Social Fund in Bremen, answer 2, D4 Databook BETKOSOL). However, this hypothesis is not always confirmed. The interview from the Department of the Interior and Sport, Internal Investigations Department (DIE), reveals an awareness of the transversality of the protection of the EU financial interest inside the national repression system and, in fact, it is offered a list of operative problems: «Legal obstacles to requests for mutual legal assistance in (also EU) foreign countries which delay investigations; insufficient human and material resources as well as a lack of expertise in the evaluation of digital mass data or in the use of encryption techniques; long waiting times for the mirroring of digital data carriers; inadequate IT equipment for evaluations; insufficient whistle-blower protection; organisational deficits in staffing in particularly extensive large-scale proceedings; tax secrecy prevents the forwarding of criminally relevant findings to the prosecuting authorities» (Department of the Interior and Sport - Internal Investigations Department (DIE), answer 3, D4 Databook BETKOSOL; see for further details in the next sections).

From the German case, it is also possible to introduce another variable that can be considered as an explanation for Belgium too. What emerges immediately from the German interviews is the

importance of the form of government for the topic here analysed. In theory, there are no differences between the way in which the EU and National financial interests are protected. In practice, it is difficult to assess if the theory matches reality, considering the extreme variance among regions: «The EU's standardisation efforts make daily work more difficult because they sometimes go too far for Germany. Efforts at standardisation on the part of the federal government in Germany come up against the limits set by federalism» (Federal Ministry of Finance, answer 3, D4 Databook BETKOSOL). In this sense, the use of the Irregularity management system (IMS) is indicated as helpful. In fact, the number of reports can be used to determine any need for action from the central government (Federal Ministry of Finance, answer 2, D4 Databook BETKOSO).

3. Section "Legal framework": towards a stabilisation of the status quo or expected reforms?

3.1 Italy

In Italy, the regulatory framework related to the protection of the financial interests of the European Union has been substantially stabilised in recent years, in the light of the many new regulations introduced recently, in particular, to comply with the various European provisions in this sector (for a complete overview of the existing regulatory framework, and of the relevant literature, please refer to the consultation of deliverables 1 and 2 of BETKOSOL research).

The data of the qualitative interviews carried out, in particular, confirm what had already emerged in the previous phases of the research, i.e. that, in general, in the Italian legal system the administrative procedures of management and control of public funds, and the related administrative and criminal measures to fight frauds in this area, are not differentiated according to the European or national origin of the resources (see in particular D1 of BETKOSOL project; see also CGIL, answer 2, D4 Databook BETKOSOL and EPPO, answer 1, D4 Databook BETKOSOL).

The representatives of the organisations interviewed, moreover, confirm that in their experience, and in the internal procedures of their organisation, there are normally no different management and control procedures or reporting criteria for the management of European funds, since these measures and operating rules are standardised for both European and national funds. However, it is necessary to consider the existence of some coordinating bodies in the field of the fight against fraud affecting the financial interests of the European Union (see COLAF, answer 2, D4 Databook BETKOSOL) and the fact that some control bodies are assigned human resources with specific expertise in the management and control of European funds (see for example Regione Lazio, answer 1, D4 Databook BETKOSOL).

Ultimately, the interviews carried out reveal the need for the existing regulatory framework not to be changed again, but, on the contrary, for a stabilisation of the current rules, to attract investment, provide clear information to investors and allow better training of public administration and contracting authorities. In short, it is recommended that there should be time, for all the actors involved, to assimilate the new regulations introduced over the years, rather than introducing new ones (see, for example, ANAC, answer 4, D4 Databook BETKOSOL; Confindustria, answer 4, D4 Databook BETKOSOL).

But together with the stabilisation of the existing regulatory framework, a shared expectation that emerges from the qualitative interviews carried out is linked to the simplification of the control and reporting mechanisms currently in place, together with the strengthening of the quality of the data collected on national and European public funds and the more effective coordination between the authorities and all the actors involved in this area in the Italian context.

It is reported that several irregularities arise, rather than from the presence of actual frauds, from the practical difficulties in understanding the complicated existing regulations. It is underlined also how coordination between authorities, and with some local authorities, is often complicated by the lack of adequate expertise in these entities, that sometimes are not able to provide adequate reporting and approach this regulatory framework.

A shared goal of the interviewed entities is therefore to favour a greater simplification of the control systems and to strengthen capacity building mechanisms in the public and private sectors (see, among others, Regione Lazio, answer 9, D4 Databook BETKOSOL.; Roma Capitale, answer 4, D4 Databook BETKOSOL; Fondirigenti, answer 4, D4 Databook BETKOSOL). In this respect, several training initiatives are reported, as well as various programmes to stimulate the digitalisation of processes and *in itinere* support to public administrations, as well as some cooperative compliance tools to help different entities (see, for instance, ANAC, answers 3, 4, 9, D4 Databook BETKOSOL).

It is recognised, however, that the implementation of the National Recovery and Resilience Plan is already determining and will continue to determine several innovations in the existing regulatory framework (see, among others, Roma Capitale, answer 6, D4 Databook BETKOSOL; Fondirigenti, answer 5, D4 Databook BETKOSOL), both for the mechanisms of control and management of funds (among other things, there is an ad hoc control body, and an innovative reporting mechanism, focused on the achievement of milestones and concrete objectives in close connection with the actual disbursement of funds) and for the necessary consequent changes to some existing regulations (there are

for instance some planned changes, by 2023, to the public contract's code; for further details on this, see section 5 of this report).

3.2 Poland

By joining the European Union, Poland assumed the obligation to combat fraud and any other illegal activity affecting the common financial interests of the Union, imposed on the Member States by Article 325 of the Treaty on the Functioning of the European Union (TFEU). Poland's accession to the EU gave rise to the need to implement legal regulations in force in the Union and adapt Polish law to the new economic, social, and economic reality (Serwaniec et al., 2021, pp. 20-23). Amendments included the Public Finance Act and the Fiscal Control Act. In fulfilling its obligation to combat fraud affecting the interests of the Union, Poland applies the same measures as it does when combat fraud affects its interests. The equal importance of protecting national and EU financial interests has been particularly emphasised in the Public Finance Act of 27 August 2009. In the light of the provisions of the Public Finance Act, the protection of EU financial interests is the duty of each body in charge of public expenditure control (see among others Ministry of Investment and Development, answer 1, D4 Databook BETKOSOL; Supreme Audit Office, answer 1, D4 Databook BETKOSOL; Regional Chamber of Audit in Bydgoszcz, answer 1, D4 Databook BETKOSOL).

The National Fiscal Administration (KAS) is a key institution in protecting the European Union's financial interests in terms of revenue. KAS is primarily responsible for state budget revenue, but also the revenue of the EU budget - its tasks include taking action to ensure that entities comply with their tax obligations (including value-added tax, which is an important element in EU revenue), as well as customs duties, which are traditionally the EU's revenue. The KAS also plays an important role in protecting the EU's financial interests in terms of expenditure, acting as an audit institution. The protection of the financial interests of the Union as regards the spending of funds under operational programmes is executed first by the Managing Authorities, the Certifying Authority, and the Audit Authority. On the ground of Polish law, the protection of financial interests of the EU involved other institutions, which through undertaken measures significantly contribute to assuring the protection of financial interests of the Union. These institutions include Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the EU at the Ministry of Finance; the Adjudicatory Commissions for Breaches of Public Finance Discipline operating at the Regional Chambers of Audit; the Internal Security Agency (ABW); the Central Anti-Corruption Bureau (CBA); the police; the prosecution; the Public Procurement Office or administrative courts. All activities undertaken by national institutions involved in the protection of the Union's financial interests are controlled by the Supreme Audit Office (Sandulli et al., 2021, pp. 104-111).

The conducted questionnaire research shows that as a rule, the controlling institutions positively assess the legal solutions adopted in the Polish legal order to protect the EU financial interests. The empirical research also confirmed that the control of EU funds spending is mainly ex-post. However, a certain shortcoming pointed out by the controlling institutions participating in the survey is a significant limitation of control criteria that these institutions may follow. In most cases, the aim of control is only to answer whether the spending of EU funds is carried out following the provisions of the applicable law (criterion of legality). In contrast, less frequently, the control aims to answer whether the EU funds were used economically and efficiently (criterion of the economy). Therefore, some of the respondents (for example Regional Chamber of Audit in Bydgoszcz, answer 4, D4 Databook BETKOSOL) postulated extension of the existing audit criteria by, e.g., evaluation of the effectiveness of their spending. The respondents also unanimously drew attention to the "competitiveness" of control institutions resulting from the adoption in Poland of a dispersed model of control over EU funds spending. Due to the lack of coordinating mechanisms that would enable, among others, the exchange of information on the results of already completed control procedures, there are situations in which control institutions duplicate their activities (see The Solidarity Trade Union, answer 3, D4 Databook BETKOSOL). This practice contributes to lowering public confidence in control institutions. On this basis, it is worth formulating a postulate to create procedures enabling the exchange of information on the results of performed controls. The respondents also drew attention to the benefits that could arise

from developing uniform control standards within all control institutions (Supreme Audit Office, answer 3, D4 Databook BETKOSOL).

3.3 Belgium

In Belgium, the protection of the EU's financial interests takes place both at the federal level and at the level of the Regions and Communities, which is why institutions at both levels were included in the study. The study focused on two areas that are particularly important for the protection of the EU's financial interests. On the one hand, the study was focused on the control mechanisms related to the auditing and spending of EU funds, which is organised at the regional level. On the other hand, it was focused on the federal level that benefited from EU-funding itself.

In particular, the interviewing institutions have been the Federal Public Service Justice (FPSJ), the Flemish Agency for Innovation and Entrepreneurship (FAIE), and the Flemish Audit Authority for EU Structural Found (FAASF).

The empirical research shows that as a rule, the controlling institutions positively assess the legal solutions adopted in the Belgium legal order to protect the EU financial interests. The empirical research also confirmed that there is a clear distinction between European projects and national projects in the financial rules to be applied. In particular, the Flemish Agency for Innovation and Entrepreneurship states that projects financed exclusively with regional funds must meet regional requirements only. The Flemish authority for innovation limits its control to Flemish regulations (FAIE, answer 2, D4 Databook BETKOSOL). However, as many projects are co-financed by the region and the EU together, potential difficulties related to EU funding are passed on to the EU institutions for scrutiny. This agency then carries out its own audit for the EU part of the funding (FAIE, answer 2, D4 Databook BETKOSOL). Furthermore, the Flemish Audit Authority for EU Structural Funds states that to some extent there are no differences between how national and EU financial interests are protected. The reason is that the audit staff are the same for both national and European funds and therefore the focus is similar (FAASF, answer 2, D4 Databook BETKOSOL). However, the Flemish authority points out that the EU provides many different answers to similar questions at different levels. This affects the auditors and complicates their position. In addition, the authority argues that it has access to a lot of information but there are too many rules to manage and comply with (FAASF, answer 2, D4 Databook BETKOSOL).

The interviews do not reveal the need to make changes to the existing legal framework to better protect the EU's financial interests. Indeed, the Federal Public Service Justice argues that there is no necessity to significantly change the EU's working procedures and rules on financial models (FPSJ, answer 6, D4 Databook BETKOSOL). Despite this, the interview conducted with the Flemish Agency for Innovation and Entrepreneurship shows that the difficulty for the future could be represented by the redistribution of control competences in the EU itself (FAIE, answer 6, D4 Databook BETKOSOL). The EU has adopted a multi-layered approach which may need to be adapted in the future. This thesis is strengthened by the assertion of the Flemish Audit Authority for EU Structural Funds. According to this authority, the approach has changed, as the Flemish regional institution guides through the whole process (FAASF, answer 6, D4 Databook BETKOSOL). The consequence would be a better EU structure as regards control over funding. According to the audit authority, a cross-cutting approach would help a lot (FAASF, answer 6, D4 Databook BETKOSOL).

3.4 Germany

The structural feature of the German legal framework is the essentially intended synchronization of the level of protection of national financial interests on the one hand and the financial interests of the EU on the other. This is flanked by the criminal provisions of the EU Financial Protection Strengthening Act, which are specifically geared towards the protection of the EU's financial interests, as well as a framework of administrative and criminal law that extends across the federal states. However, it leaves

the possibility for the federal states to consider regional specificities in connection with the allocation of funds. Since the qualitative study did not identify any structural gaps in the protection of the EU's financial interests, the expansion and consolidation of the legal level of protection in Germany should rely less on far-reaching reforms and more on selective intervention. In particular, the study has shown that treating the financial interests involved as indiscriminately as possible, both at the administrative level and in law enforcement, fosters synergy effects that have a positive impact on the level of protection of the EU's financial interests. Thus, the application of uniform standards not only promotes procedural clarity; stricter national standards, as can be observed, for example, with regard to the prohibition of the premature start of measures, also have an impact on the protection of European financial resources. However, gaps in protection must be noted concerning the currently restrained use of the data mining tool ARACHNE. An obligation to use ARACHNE would be welcome to promote the recognizability of criminogenic structures and patterns across the federal states (see also Federal Ministry of Finance - Unit EA 6 answer 4, D4 Databook BETKOSOL).

In contrast, far-reaching efforts at standardisation conflict with the limits set by federalism (Federal Ministry of Finance - Unit EA 6 answer 3, D4 Databook BETKOSOL). This is against the background that both the administration of the individual programs (co-)financed by the European Structural Funds and law enforcement have the responsibility of the federal states. Not only the mechanisms related to the provision of financial resources and the control of the individual projects, but also the systems for fraud prevention and anti-corruption have been adapted in lengthy processes to the structural characteristics of the individual federal states (city states/area states; "new"/"old" federal states). In the end, a certain degree of standardization is achieved through coordination between the federal states.

In contrast, the introduction of national anti-fraud strategies for the European Structural Funds via the implementation of a (mandatory) catalogue of measures would provoke practical frictions, as a national strategy with EU funds would only include a part of the funds used in the individual projects. At present, sufficient harmonization between the federal states is already ensured by the European and national legal frameworks. Thus, not only the management and control systems designated by the European Commission are used in the federal states, but the comprehensive European guidelines are also applied. German law also provides for legal prohibitions across the federal states about the acceptance of rewards, gifts and other benefits (see sect. 71 para. 1 of the Federal Civil Service Act (BBG); sect. 42 para. 1 of the Civil Service Status Act (BeamtStG) as well as sect. 3 para. 2 of the Collective Agreement for the Public Service (TvöD) and sect. 3 para. 3 of the Collective Agreement for the Public Service of the federal states (Tv-L), including the duty to notify the employer) as well as exceptions from the duty of secrecy under civil service law in the case of notifications in connection with corruption offences (sect. 67 para. 2 BBG; sect. 37 para. 2, no. 3 BeamtStGB). In addition, statutory breaches of tax secrecy, which are protected under criminal law (sec. 355 of the Criminal Code), are regulated (sect. 30 para. 1 of the Fiscal Code). Thus, under narrow conditions, tax officials are obliged to report conduct relevant to criminal law or fines to the public prosecutor's office (sect. 4 para. 5, no. 10, sentence 3 of the Income Tax Act; sect. 30 para. 4, nos. 4, 5b of the Fiscal Code), whereby this duty to report is secured under criminal law by section 258a of the Criminal Code.

However, because the duty to report only applies to public officials, the legal status quo reveals gaps in the protection of (non-anonymous) private whistle-blowers. They harm criminal prosecution in corruption since private whistle-blowers play a central role as witness evidence at the various stages of criminal proceedings. Against this background, it is to be welcomed that the coalition parties intend to go beyond the minimum requirements formulated at the European level with the Whistle-blower Act planned to implement the Whistle-blower Directive (Directive 2019/1937) and thus comprehensively strengthen the legal position of whistle-blowers. In this respect, the reporting of not only breaches of EU law, but also of "significant breaches of regulations or other significant misconduct" at the national level is to be covered (see coalition agreement between SPD, Bündnis 90/Die Grünen and FDF, p. 111; see here).

Regarding substantive criminal law, another protection gap was evaluated during the qualitative study. It relates to the existence of a wrongful agreement, i.e., the equivalence between advantage and concrete official act, which is necessary for the realisation of the offences of bribery (Sects. 299, 299a, b, 332, 334 of the German Criminal Code) and which is usually difficult to prove in practice (Public Prosecutors Office - Corruption Department (Hamburg), answer 3.a, D4 Databook BETKOSOL). From

a legal policy point of view, however, a relaxation of the agreement on injustice based on sections 331 paragraph 1, 333 paragraph 1 of the Criminal Code (acceptance and granting of advantages), in which no concrete official act has to occur as consideration, but a general goodwill with regard to future decisions is sufficient (Federal Supreme Court, judgement of 14 October 2008 – BGHSt 53, 6 (14f.)), does not seem likely at present. This is against the backdrop of the ultima ratio character of criminal law as well as the problem of demarcation from unpunishable conduct that comes to a head in this case.

Regarding the introduction of corporate criminal law, reforms cannot be predicted with certainty at present. The coalition agreement of the governing parties (coalition agreement between SPD, Bündnis 90/Die Grünen and FDF, p. 111; see here) does address the issue, but only speaks of a "revision of the corporate sanctions regulations including the level of sanctions", which does not clearly point to a new legal regulation, as was still being pursued in the last legislative period with the draft of the Association Sanctions Act, which was controversial on many points. Improvements in the protection status of (national and EU) financial interests are questionable in this case. This is against the background that the present study was also able to confirm that Section 30 of the Ordinances Act plays a rather subordinate role in practice (see also Krems (2015), p. 6). Since this is an area in which masses of offences must be processed, the imposition of a fine is often refrained from (also with a view to limited personnel resources), although the practical significance has recently increased significantly, among others in criminal tax law (Madauß (2016), p. 98). However, placard measures of deterrence via an increase in sanction ceilings as well as the definition of compliance obligations and the creation of a "precise legal framework for internal investigations" are unlikely to achieve a decisive influence on existing law enforcement practice or on the avoidance of criminogenic structures in companies. In contrast, the introduction of the official principle promises to be a more effective set of instruments.

References

- Krems, K.-H. (2015). Der NRW-Entwurf für ein Verbandsstrafgesetzbuch. Gesetzgeberische Intention und Konzeption. In Zeitschrift für Internationale Strafrechtsdogmatik (pp. 5-10).

- Madauß, N. (2016). Gewinnabschöpfung und steuerliche Ordnungswidrigkeiten. In Neue Zeitschrift für Wirtschafts,- Steuer- und Unternehmensstrafrecht (pp. 98-101).
- Sandulli, A., Tatì, E., De Becker, A., Serowaniec, M., Nato, A. (2021). The Protection of EU Financial Interests across Four National Legal Systems: a Comparative Perspective (pp. 104-111).
- Coalition agreement between SPD, Bündnis 90/Die Grünen and FDF, available here
- Serowaniec, M., Wilmanowicz-Słupczewska, M., Wantoch-Rekowski, J., Morawski W. (2021). Public finance and taxation in the Constitution of the Republic of Poland. (Toruń: Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika).

4. Section “critical sector”: public procurement, corruption, irregularities in submission of documents (others)

4.1 Italy

The analysis of the qualitative interviews carried out shows some recurrent criticalities and irregularities that, within the Italian system, characterise the activities of management and control of legality in the use and allocation of European funds.

In particular, what concerns the most recurring frauds and criticalities can be mentioned among many others: the failure to carry out the investments for which public funding had been requested and obtained; the presentation of false invoices; the destination of structures for purposes other than those provided for by law; the recourse to (fictitious) suppliers based abroad; the use of false bank reference letters etc. (see, in particular, COLAF, answer 7, D4 Databook BETKOSOL).

Another “critical sector” is, of course, public procurement. First, about the protection of the financial interests of the Union, it should be noted that in this field there is a danger of double financing concerning the national and European financial flows.

Secondly, again in the field of public procurement, it has been pointed out that one of the most important critical issues is linked to the fact that "...Italy is fragmented in its administrative history, as there are about 30,000 contracting stations and 100,000 cost centres, several of which do not have the necessary expertise to manage these public contracts [...]". (See ANAC, answer 3, D4 Databook BETKOSOL).

This critical issue is also confirmed by the reports of other authorities describing their relationship with local administrations, as it was noted that the latter are often unable to ensure clear reporting, given the lack of specific expertise in this area (see Regione Lazio, answer 3, D4 Databook BETKOSOL).

Indeed, in the field of public contracts, several irregularities are also found with reference to the management of European funds, including: "...the problem of fragmentation of tenders to try to avoid regulatory constraints on public procurement; the wrong formulation of calls for tenders; the construction of ad hoc calls for tenders for certain operators; illicit attempts to influence public officials in the formulation of calls for tenders; the presence of clauses that do not comply with the law; the aforementioned problem of the lack of expertise of contracting authorities [...]". (See ANAC, answer 7, D4 Databook BETKOSOL).

It also emerged how one of the main critical issues in this area is also linked to the problem of subcontracts (see Regione Lazio, answer 7, D4 Databook BETKOSOL), as well as the issue of the need to use external providers for specific consulting in this area, to overcome the lack of expertise already mentioned (see Roma Capitale, answer 6, D4 Databook BETKOSOL). The links between the protection of European financial interests and the issue of state aid were also mentioned (see Confindustria, answer 5, D4 Databook BETKOSOL).

Again, again the Italian system, it was pointed out that "...a high number of irregularities detected does not mean that that country is at greater risk of fraud, but simply that it does more controls and does them better" (see Fondirigenti, answer 4, D4 Databook BETKOSOL).

Moreover, the authorities consulted have also highlighted how the implementation of the National Recovery and Resilience Plan will put Italy in front of several challenges with respect to the ability of the current system to ensure adequate protection of European financial interests, because it will pose the problem of spending European funds quickly and well, but without jeopardising at the same time the quality and effectiveness of public controls on the protection of the legality of the allocation and use of these resources. At the same time, the National Recovery and Resilience Plan will raise the issue of integrating new ad hoc control bodies and new reporting mechanisms within the already complex existing regulatory system.

4.2 Poland

In the light of the Polish legal regulations, an irregularity in the disbursement of Union funds means any infringement of Union law or national law concerning the application of Union law, resulting from an act or omission by an economic entity involved in the implementation of Union funds (project implementation), which has or may harm the Union budget by charging an unjustified expense to the Union budget.

Considering the experience to date in the implementation and management of EU funds and the results of empirical research carried out, attention should be drawn to the following areas susceptible to irregularities including fraud in Poland:

1) public procurement, including in particular non-application of the Public Procurement Law, application of an inappropriate public procurement procedure (application of non-competitive procedures), failure to observe the conditions for awarding public procurement, e.g. incorrect announcement or lack of publication of a contract notice (failure to publish an announcement of a change in the terms and conditions of the contract), unequal treatment of economic operators (demanding documents that were not necessary for the procedure), unauthorised changes to the material terms of a contract with a contractor (see Supreme Audit Office, answer 7, D4 Databook BETKOSOL);
2) award of a grant to an unauthorised beneficiary, in particular because of submission by the Beneficiary of false documents or statements; This infringement most often consists in submitting a forged, counterfeited, or false document or an unreliable written statement concerning circumstances which are material for obtaining a public procurement contract to obtain it.
3) reimbursement of ineligible expenditure, including in particular: double financing of the same expenditure, e.g. reimbursement of VAT reimbursable based on the Act of 11 March 2004 on VAT on goods and services, reimbursement of expenditure subject to financing under another programme co-financed from public funds, expenditure not related to the implemented project, unjustified expenditure (related to the implemented project but redundant), overstated expenditure, failure to take into account revenue gained by the Beneficiary in connection with the implemented project;
4) submitting incomplete, incorrect, or falsified documentation in support of expenditure in a payment claim;
5) lack of implementation by the Beneficiary of the actions foreseen in the project (see Marshall Office of the Kujawsko-Pomorskie Voivodeship, answer 3 and 7, D4 Databook BETKOSOL);
6) implementation of the project not in compliance with the applicable laws, e.g. implementation of the project without the permits (decisions) required by the construction law (Krzykowski, 2013, pp. 70-99).

A significant problem resulting in irregularities in the disbursement of EU funds in Poland is bid rigging, i.e., an agreement between entrepreneurs which leads to the abandonment of competitive actions in favor of secret cooperation in submitting bids regarding the price or quality of goods or services. Polish doctrine distinguishes two main types of collusive tenders: a) horizontal collusion or cartel, i.e., an agreement limiting competition between entrepreneurs who should compete against each other, b) vertical collusion, i.e., an agreement between entities operating at different levels of trade (e.g. between a manufacturer and a distributor, or an ordering party and a contractor). Both types of collusion pose a severe problem. The contracting authority chooses the economically less advantageous offer or purchases goods of significantly lower quality than they could have chosen if the competition in the tender had functioned properly (Miąsik, 2009, p. 53).

According to CBA reports on anticipated corruption threats in Poland published in 2013-2020 (see here), taking into account the amount of EU funds and the importance for public finances, this area should be considered particularly vulnerable to corruption threats. Public projects implemented with European funds absorb substantial financial resources, which is why they can become the focus of dishonest beneficiaries and unreliable officials. For at least two reasons, they can be a significant burden on the state budget: a) firstly, they usually involve national funds to a certain extent; b) secondly, the state budget runs the risk of unreliable spending of funds, which may result in repayment of co-financing. The analysed CBA reports emphasise that the risk of corruption is to be expected where both public institutions and economic entities are most active - and where significant public funds are spent, i.e., during the implementation of large projects. Applying the process approach, awarding contracts from public funds, issuing decisions and permits, and establishing laws are exposed to the most extensive corruption risks.

The occurrence of irregularities will always result in an obligation to return the funds (if the funds have already been paid). Suppose an irregularity is found, which results in an obligation to return

funds. In that case, the Beneficiary is called upon to return the funds or to agree to a reduction of subsequent payments. If this request is not fulfilled, a decision obliging the Beneficiary to return the funds is issued, specifying the deadline for the repayment. After its ineffective lapse, enforcement proceedings are initiated.

In case of committing a crime by the Beneficiary, he/she shall bear criminal responsibility - under the terms and conditions arising from relevant provisions. In the cases referred to in Article 207(4) of the Act of 27 August 2009 on Public Finances, the Beneficiary shall be obligatorily excluded from the possibility to receive resources assigned for the implementation of programmes financed with European funds. The period of exclusion ends with the lapse of three years counted from the date of the Beneficiary's refund.

4.3 Belgium

Considering Belgian legislation, the Belgian Criminal Code[1] does not provide for specific offences relating to grant fraud, let alone fraud relating to European Funds. Only the general provisions of the Criminal Code can be used to combat such fraud (F. De Ruyck and Y. Van Landeghem, 2021). Therefore, in 1933 a special Royal Decree[2] was introduced to combat these specific forms of crime; these have since been modified to ensure that the financial interests of the EU are also protected by this legislation. Article 1 of the Royal Decree provides that all declarations concerning the request for, or the continuation of grants, compensations and allowances financed with public funds must be truthful and complete. Furthermore, the applicant who knows he is no longer entitled to a specific grant or allowance is obliged to declare it. In 1994 the federal legislator added a new definition of a criminal offence to the royal decree with a law of 7 June 1994[3] to be able to combat fraud with funds and grants from the European Union. According to several authors at the time, the decision to change a royal decree into law was not considered particularly good legislative engineering, but the sense of urgency was quite high at the time.

Since the experience to date in the implementation and management of EU funds and the results of empirical research carried out, attention should be drawn to the following areas susceptible to irregularities including fraud in Belgium. The Flemish Agency for Innovation and Entrepreneurship (FAIE) affirms that the most frequent findings are based on a lack of knowledge of the existing regulations and procedures. It is not due to bad intentions or to conscient abuse of funding but rather to lack of knowledge or incorrect interpretations (FAIE, answer 7, D4 Databook BETKOSOL). Furthermore, the agency affirms that the major issue concerns the many different parts of the EU which do not seem to be in constant communication. It makes it difficult to understand the role of the EU in funding given the fact that the different layers do not seem to communicate perfectly (FAIE, answer 7, D4 Databook BETKOSOL).

Moreover, the Flemish Audit Authority for EU Structural Funds (FAASF) notes that the most significant irregularities are accounting and calculation errors, other ineligible expenditures - unrelated to the project or to the total of other expenditures - and incorrect application of the methodology (FAASF, answer 7, D4 Databook BETKOSOL). It is also important that the Flemish audit authority cannot determine whether fraud has occurred. Indications of fraud automatically lead to information from the Belgian Public Prosecutor's Office (FAASF, answer 7, D4 Databook BETKOSOL). However, this is politically tangible and therefore auditors are reluctant to conclude that fraud has occurred. Also, the Belgian authority suggests that a transversal approach would strongly simplify auditing. Currently, reviewers experience an overflow of information they are dealing with. The problem is not information itself, but information management while at the same time managing projects as a consultant and

[1] Criminal Code, 8 June 1867, Belgian Official Gazette, 9 June 1867.

[2] Royal Decree of 31 May 1933 regarding the declarations concerning subsidies, compensations and allowances, Belgian Official Gazette 1 June 1933.

[3] Act of Parliament of 7 June 1994 amending the Royal Decree of 31 May 1933 regarding declarations concerning subsidies, compensation, and allowances, Belgian Official Gazette 8 April 1994.

supervising projects as auditors (FAASF, answer 9, D4 Databook BETKOSOL). Better distribution of competence would be a big advantage.

4.4 Germany

Within the framework of the study, it was possible to observe the principle functioning of existing organisational and coordination systems in connection with procurement. First, a high degree of control manifests itself in a strict disbursement practice at the administrative level. It begins with different application procedures (ESF Administrative Authority (Bremen), answer 1, D4 Databook BETKOSOL) that are regulated in detail in small steps. Competitive calls are used when only a small number of funding commitments can be made, but a large number of bids are expected. The aim of this procedure is to select the best application, measured in terms of the ratio of the funding used to the expected goal. The call for proposals defines the content and formal requirements as precisely as possible and specifies submission deadlines and evaluation grids. During the competition procedure, the authority, and the intermediary bodies – the decentralised contact persons for all interested parties – will only answer formal queries and will not provide advice on the content. After the deadline, the offers are recorded and checked according to the dual control principle and evaluated according to a point system. The results are then compared, and a ranking is created from the mean values of the points awarded; in the event of extremely divergent evaluations, a third opinion is consulted. As a rule, 70% of the maximum possible points are required to receive funding approval; only in exceptional cases is a lower rating sufficient. In the staggered procedures, applications may be submitted continuously until the expiry of certain deadlines, and the applications received will be evaluated according to the same procedure as for calls for proposals. Finally, individual application procedures are possible on an ongoing basis. The evaluation of projects with a total volume of 100,000 EUR or more is carried out here according to the principle of dual control, with the evaluation schemes being published in advance.

While the section head checks for possible double funding or a violation of the requirement of subordination, the processing department is responsible for checking for conflicts of interest and, if they exist, for rejecting the funding case. The processing department evaluates the application with regard to its basic eligibility for funding and submits a proposal on funding, type of funding, funding amount and material target figures/milestones. The decision is then reviewed by the section head. Funds will only be allocated if there is an agreement between the section head and the project management on the number of funds and the target figures. In the case of a grant, the audit opinion, determination, and notice of grant are subjected to quality control via the online database VERA and checked by the clerk and section head in accordance with the dual control principle. If the funding volume exceeds 25,000 EUR, a copy of the decision is sent to the Court of Audit. If the funding is approved, payments are made exclusively according to the reimbursement principle. Advance payments at the beginning of a project can only be requested once, and partial payments on submitted applications for disbursement are generally limited to 80% of the requested disbursement amount. Finally, there is close monitoring of project implementation and target achievement.

Overall, the administrative concepts for combating and preventing fraud and corruption have proven themselves in practice (ESF Administrative Authority (Bremen), answers 3 and 8, D4 Databook BETKOSOL). For example, employees are obliged to attend annual training courses on fraud prevention and anti-corruption. New hires and changes in the area of responsibility are obliged to make a declaration, according to which any conflicts of interest must be reported immediately to the superior. In addition, all case handlers declare upon taking on each project that there is no conflict of interest in the individual case. Anonymous reporting points enable irregularities to be reported directly to the head of the department. Additionally, every three years a new distribution of the Case Management-Bearer Allocation is carried out by the section management or distribution to several case management is already carried out at the beginning. Furthermore, all fundamental project decisions are always made in accordance with the dual control principle, compliance with which is documented and monitored by the audit authority. The same applies to personal discussions with the project executing agency, which are also conducted in accordance with the dual control principle. Overall, the principle of procedural clarity applies: the procedural path for action in the event of an irregularity occurring is clearly described, all parties involved in the procedure are named, digital access to the individual procedural rules is

guaranteed and corresponding changes are trained. Finally, irregularities are recorded and evaluated in a risk register and thus made the subject of the annual risk assessment.

Against this backdrop, the study did not identify any risks that can be attributed to the general inadequacies of the existing systems. This is also because recoveries are only necessary in exceptional cases and irregularities in connection with the awarding of contracts hardly ever occur. Moreover, when they do occur, they are generally due to careless mistakes on the part of the applicant and not to fraudulent intentions (ESF Administrative Authority (Bremen), answer 7, D4 Databook BETKOSOL). However, there are risks to the financial interests of the EU with regard to deficits in the density of controls, which, however, are not so much due to deficiencies in the process organisation, but rather to a lack of personnel resources (see also the comments under 5.3.). In practice, regarding the simplified cost options (VKO), which now allow modular accounting instead of accounting for each individual expense, a reduction in the occurrence of errors in individual accounting is at least expected to reduce the risk of fraud in "micro-cases". In addition to risks related to the density of controls, it also became apparent that double funding by other agencies as well as compliance with the de minimis limits at the level of the federal states is difficult to verify (ESF Administrative Authority (Bremen), answers 4 and 9, D4 Databook BETKOSOL). This risk can be countered by introducing a de minimis register at the national or EU level.

Risks to the financial interests (also) of the EU could be observed with regard to delays in the investigation procedure, especially in connection with cross-border cases. They force the investigative procedures in the area of fraud/corruption, which are in fact regularly time-consuming anyway, into a "race against the statute of limitations" (Public Prosecutors Office - Corruption Department (Hamburg), answer 7, D4 Databook BETKOSOL) and are to be taken into account in mitigation of punishment in the case of a conviction (see Federal Supreme Court, decision of 16.10.1997 – NStZ-RR 1998, 108). In view of the numerous intermediary agencies, initially the European Investigation Order as well as requests for mutual legal assistance abroad generally prove to be cumbersome. In this respect, a legal anchoring of online interrogation could achieve an acceleration. The increasing mechanisation of criminogenic structures, especially the increased use of encryption techniques, also encounters a lack of material and personnel resources for the evaluation of digital (mass) data (Public Prosecutors Office - Corruption Department (Hamburg), answer 3, D4 Databook BETKOSOL; Internal Investigations Department (DIE) (Hamburg), answer 3, D4 Databook BETKOSOL). The result is not only a delay in the investigation process, but also a loss of evidence.

References

- De Ruyck, F. and Van Landeghem, Y. (2021), Overzicht van het Belgisch algemeen strafrecht (Bruges: Die Keure).
- CBA reports on anticipated corruption threats in Poland published in 2013-2020, available here
- Krzykowski, P. (2013). Nieprawidłowości przy realizacji projektów współfinansowanych ze środków unijnych w perspektywie finansowej 2014–2020, (Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego)
- Miąsik, D. (2009). Porozumienia, których celem jest ograniczenie konkurencji w rozumieniu art. 81 ust. 1 TWE. In Europejski Przegląd Sądowy, No. 8, (p. 53).

5. Section "Covid-19": which changes during the pandemic and in view of new resources?

5.1 Italy

Following the parliamentary debate on the proposal for a National Recovery and Resilience Plan (PNRR) presented by the Conte II Government to Parliament on January 15th (debate ended on April 15th, 2021), the subsequent Draghi Government presented (on April 25th, 2021) an update of the PNRR. Subsequently, on April 30th, 2021, Italy's PNRR was officially submitted to the European Commission (and, soon after, to the Italian Parliament).

On June 22nd, 2021, the European Commission published the proposal for a Council Implementing Decision, providing an overall positive assessment of the Italian PNRR. In addition, there was a detailed analysis of the Plan. On July 13th, 2021, Italy's PNRR was approved via Council's Implementing Decision, which welcomed the European Commission's proposal.

The Italian PNRR consists of six missions (digitalization, innovation, competitiveness, and culture; green revolution and ecological transition; infrastructures for sustainable mobility; education and research; inclusion and cohesion; health) and three strategic axes (digitalization and innovation; ecological transition; social inclusion). The Italian Government will be able to ask the European Union for 191.5 billion euros, divided into 68.9 billion euros in grants and 122.6 billion euros in loans.

In the PNRR of Italy, presented on April 30th, 2021, the Government also expressed the desire to set up a Complementary Fund, with a total endowment of approximately 31 billion euros. This Fund has been intended to finance specific actions to supplement and complete the Plan. Through the additional Complementary Fund, Italy integrates the European resources available to pursue the PNRR priorities and objectives. The decree-law of May 6th, 2021, n. 59, established the Complementary Fund to the PNRR with a total endowment of 30.6 billion euros for the years 2021 to 2026.

To efficiently manage this huge amount of financial resources (mostly of European origin), the Italian Government has adopted a specific decree-law (decree-law May 31st, 2021, n. 77). In this way, Italy aims to avoid, or in any case contain, as much waste of resources as possible and to achieve the programmed objectives within the timeframe agreed with the European Commission.

With this decree-law, among other things, a central office of general management level, called Central Service for the PNRR, was established at the Ministry of Economy and Finance - Department of General State Accounting. The Central Service for the PNRR is tasked with operational coordination, monitoring, reporting and control of the PNRR. It also makes the national contact point for the PNRR implementation. In addition, the Central Service for PNRR is responsible for managing the Rotation Fund of the Next Generation EU-Italy, its related financial flows, and the monitoring system on the implementation of PNRR reforms and investments. This Service ensures the necessary technical support to the central administrations in charge of the interventions provided for in the PNRR.

At the Department of State General Accounting - General Inspectorate for Financial Relations with the European Union (IGRUE), the decree-law May 31st, 2021, n. 77, also established a non-general management office with PNRR audit functions. The office is functionally independent with respect to the structures involved in the PNRR management. In carrying out the control functions relating to intervention lines implemented at the local level, it makes use of the help of the territorial State Accounting Offices.

Looking at protecting financial interests, the subsequent decree-law November 6th, 2021, n. 152, stands out. It indeed contains urgent provisions for the PNRR implementation (in particular, measures to simplify the administrative procedures necessary to achieve the PNRR objectives) and for the prevention of mafia infiltration.

The need to strengthen the protection of EU financial interests at a national level following the Covid-19 crisis and the PNRR approval does not emerge only from the recent regulatory interventions of the Government, but also from the recent experience of public administrations. This clearly emerges from the empirical research we conducted.

In Italy, both national (COLAF and ANAC) and local (Regione Lazio and Roma Capitale) institutions are involved in the procedures of auditing the spending of EU funds. Therefore, the study covered both national and local level institutions. What emerged is that Italian public administrations perceived some changes in the protection of the EU financial interests after the outbreak of the pandemic. They also expect further changes in the way national institutions will work in the next future.

The Committee for the Fight Against Community Fraud (Italian COLAF) highlighted the way new risks of pandemic-related irregularities have required closer coordination among the various

competent structures of the Operational Programs. This was necessary to respond both to last year changes related to new "simplified" and "accelerated" procedures (introduced by the decree-law on March 17th, 2020, n. 18), and to the continuing difficulties in performing checks and audits in an ordinary way, partly due to the emergency restrictions (COLAF, answers 5, and 6, D4 Databook BETKOSOL).

The National Anti-Corruption Authority (Italian ANAC) reported a decrease in transparency in allocating public funds (direct awards and negotiated procedures) during the pandemic. The need was to ensure economic recovery, but this also increased the risk of illegal behaviours, with the danger of excluding virtuous companies from the public procurement market. However, ANAC remarked the Public Contracts Code is to be amended by 2023. Accordingly, ensuring effective reporting must also be considered. Transparency issues affect the contract execution stage more than the contract award stage. The reason is due to control being carried out only by public authorities in the former, while in the latter there is widespread control also by competitors to some extent (ANAC, answers 5, and 6, D4 Databook BETKOSOL).

Local institutions (Regione Lazio and Roma Capitale) stated that the Covid-19 emergency has increased the use of EU funds to support public spending to contain the social and economic effects of lockdown (Regione Lazio, answers 5-6, D4 Databook BETKOSOL). Roma Capitale, in particular, made greater use of EU funds to support specific expenses for citizens (e.g., shopping vouchers and rent support). Local institutions request more skills and human resources for the management and control of EU funds. In their view, it is more advantageous to strengthen existing offices rather than to turn to external service providers (Roma Capitale, answers 5, and 6, D4 Databook BETKOSOL).

Significant data also came up from target groups interviews (CGIL, Confindustria e Fondirigenti). CGIL perceived an increase in the risk of fraud in using EU funds after the pandemic. The Covid-19 emergency indeed caused many actors to take interest in EU funds. Administrative difficulties of local authorities, on one hand, and lack of sensitivity of the beneficiaries can lead to a misuse of EU funds (CGIL, answers 5, and 6, D4 Databook BETKOSOL).

Confindustria saw a great deal of improvement. Throughout the emergency, economic support measures were possible thanks to the European State aid Temporary Framework. As a result, companies became further aware of the advantages of Italy being an EU member (Confindustria, answers 5-6, D4 Databook BETKOSOL).

Fondirigenti also thinks that PNRR brought about crucial changes. Firstly, EU funds are now allocated based more on achieved objectives than costs as in the past. Secondly, the EU Commission greenlit expenses that previously could not be financed (Fondirigenti, answers 5, and 6, D4 Databook BETKOSOL).

5.2 Poland

The EU Member States are currently struggling with the consequences of the COVID-19 epidemic, which has developed into a severe socio-economic crisis before our eyes. It is hitting social relations, economic stability, and the possibility of realizing fundamental human rights. Health measures and movement restrictions, affecting production, demand, and trade, have reduced economic activity and led to increased unemployment, a sharp drop in business incomes, a growing public deficit, and widening inequalities within and between Member States (Serowaniec, 2021, pp. 9-12). The pandemic also had the effect of prolonging the procedures for controlling the spending of EU funds. In the early days of the pandemic, the protection of the EU's financial interests was made very difficult because controls did not take place as before. It was only with time that it was decided to introduce a two-stage control: 1) remote (verification of submitted documentation) and 2) stationary (field monitoring visit). The work of control institutions systematically encountered problems with the timely submission of documents by Beneficiaries. This problem has increased the length of control procedures. On the other hand, several solutions were introduced to facilitate accounting for the disbursement of EU funds by Beneficiaries (see Marshall Office of the Kujawsko-Pomorskie Voivodeship, answers 3 and 5, D4 Databook BETKOSOL).

Of significant importance was the abolition of the punishability of breaches of public finance discipline, which was in force in the period from 31 March 2020 to 3 September 2020 based on Article 15w and Article 10c of the COVID-19 Act (The Act of 2 March 2020 on Special Solutions Related to

Preventing, Counter-acting and Combating COVID-19, other Contagious Diseases and Crises Involved Thereby, J. of L. of 2020, item 374) concerning activities undertaken in connection with combating the effects of epidemics. It should be noted here that Article 27 of the Act of 17 December 2004 on responsibility for infringement of public finance discipline (Journal of Laws of 2021, item 289, hereinafter as "uondfp") includes a specifically defined state of emergency. Liability was excluded in the case of a breach of discipline committed to counteracting the effects of the so-called random event. It was defined as an event caused by external factors, which cannot be foreseen with certainty directly threatening the life or health of people or threatening to cause damage disproportionately more significant than that caused by an act or omission infringing the public finance discipline. In the event of such an occurrence, Article 27 (1) of the uondfp stipulates that liability is not incurred if the act or omission was undertaken solely to limit the effects of the fortuitous event. It should be assumed that the phrase "no liability is incurred" means that the controlling body does not address notification of a breach of public finance discipline in such a case. Article 15w was also inserted into the COVID-19 Act on 31 March 2020 as follows: "Does not commit the offense specified in Article 231 or Article 296 of the Act of 6 June 1997. - Penal Code, a disciplinary tort or an act referred to in Article 1 of the uondfp, who, during the period of an epidemic declared on account of COVID-19, when purchasing goods or services necessary for combating that epidemic, breaches his official duties or the regulations in force in this respect, if she/he acts in the public interest, and without committing those breaches the purchase of those goods or services could not be realized or would be materially endangered." The "COVID-19" provisions also broadly excluded the obligation to apply the Public Procurement Law. Most notably, from 8 March to 4 September 2020, this applied to contracts awarded to overcome an epidemic. Article 6(1) of the COVID-19 Act provided that the provisions of the Act of 29 January 2004 did not apply to contracts for services or supplies necessary to counteract COVID-19. - Public Procurement Law if there is a high probability of rapid and uncontrolled spread of the disease or if the protection of public health requires it.

However, it should be noted that the issues presented above concern the legal and material grounds for responsibility for a breach of the public finance discipline. Neither the COVID-19 Act nor other regulations of universally binding law have changed the rules of pursuing liability for such violations (Robaczyński, 2021, pp. 20-35).

5.3 Belgium

In June 2021, the European Commission gave the green light to Belgium's recovery and resilience plan to come out of the COVID crisis (see here). The Commission deems Belgium's plan to include an extensive set of mutually reinforcing reforms and investments that contribute to effectively addressing all – or a significant subset – of the economic and social challenges outlined in the country-specific recommendations addressed to Belgium by the Council in the European Semester in 2019 and 2020. On the one hand, the plan includes relevant fiscal and structural reforms expected to improve the quality and sustainability of public finances. These include the systematic integration of spending reviews in all government levels' budgetary planning cycles to improve the quality and efficiency of public spending. Moreover, a pension reform aims to improve the financial and social sustainability of the pension system against the backdrop of increasing public pension expenditure. On the other hand, the plan also includes reforms and investments to address long-term labour market challenges. These include measures to promote more effective active labour market policies, improve labour market performance, and tackle discrimination in the labour market. Furthermore, significant investments have been introduced to boost research and innovation, notably by implementing more efficient production processes based on emerging energy technologies, the development of alternative production processes in nuclear medicine for cancer treatment, and measures to strengthen the cyber capabilities of small and medium enterprises and combat cyber criminality (see here). The plan also includes measures to promote a circular economy and better resource management by setting up new recycling infrastructures to close gaps in different value chains, also seeking to develop alternatives to using harmful chemicals and create innovation partnerships (see here).

In August, the European Commission disbursed 770 million euros in pre- financing to Belgium, representing 13% of the total funds foreseen. The investments and reforms financed by the Recovery

and Resilience Facility in Belgium are expected to have a strong impact on the economy and society. For example, 400 million euros will go towards climate change adaptation, biodiversity restoration and climate resilience. 480 million euros are earmarked for investments in a more inclusive and sustainable education system for all language communities. 450 million euros will be used to strengthen economic and social resilience, improve, and expand education provision, facilitate the integration of vulnerable groups, and improve labour market access for jobseekers. A large part of the EU funds will be used in the years 2021 to 2023 for short-term projects that the country hopes will have a quick impact on the economy.

Despite the pandemic and the Next Generation representing a fundamental change for the European Union and the Member States, the Belgian national institutions see no changes in the way they will work for the protection of the EU financial interest. The Federal Public Justice Service (FPJS, answer 5, D4 Databook BETKOSOL) states that no indication has been given towards increasingly significant issues regarding the pandemic and the new post-pandemic context. Furthermore, the Flemish Agency for Innovation and Entrepreneurship (FAIE) argues that it is difficult to make a general distinction between the pre-Cove period and the post-Covid period (FAIE, answer 5, D4 Databook BETKOSOL). The control mechanisms have not changed. Obviously, the use of REACT means will be linked to the consequences of the Covid-19 crisis but has not yet foreseen big differences as regard the protection of the EU financial interest (FAIE, answer 5, D4 Databook BETKOSOL). Also, the Flemish Audit Authority for EU Structural Funds (FAASF) states that no significant changes have been detected. As for some projects delayed due to Covid, the EU has postponed some deadlines and has shown great willingness to accept the circumstances. Now, according to the Belgian audit authority, no substantial changes can be found (FAASF, answer 5, D4 Databook BETKOSOL).

5.4 Germany

In Germany, no pandemic-related changes in the risk structure can be observed at present, although the disbursement conditions during the pandemic favoured the realisation of risks that existed anyway. First, they refer to the limited control density in connection with decisions that have to be made under time pressure (Federal Ministry of Finance - Unit EA 6, answer 7, D4 Databook BETKOSOL). In connection with the payment of Corona aid, a large number of applications had to be processed within a short time. Because it could not be ensured throughout the country that sufficient staff was available to carry out the necessary controls, numerous incidents occurred. The general departments of the public prosecutor's offices are now entrusted with dealing with criminal fraud, whereby a separation into criminal offences involving EU funds and those involving national financial interests is not provided for by the applicable law and therefore does not take place in investigative practice (Public Prosecutors Office - Corruption Department (Hamburg), answer 1.a, D4 Databook BETKOSOL). This is against the background that the only decisive factor for the initiation of preliminary proceedings is whether there are sufficient factual indications of a criminal offense, so-called initial suspicion (sect. 152 para. 2 of the Code of Criminal Procedure).

During the pandemic, the risk of double funding was further encouraged. This was due to many different aid programs at the federal and state level. However, increased awareness at the level of the administrative authorities made it possible to control this risk by requesting so-called corona self-declarations from the applying agencies (ESF Administrative Authority (Bremen), answer 5, D4 Databook BETKOSOL; see above under 4.4. for the introduction of a de minimis register). Even though more funds have been available since the outbreak of the pandemic, the existing systems have proven to be suitable instruments for controlling national financial interests as well as the financial interests of the EU. However, now, it cannot be ruled out with certainty that pandemic-related changes in the risk structure will become apparent in the future. This applies in particular to corruption offences, which always appear with a time lag (Public Prosecutors Office - Corruption Department (Hamburg), answer 5, D4 Databook BETKOSOL).

In the course of the investigation, however, it was possible to identify coordinative structures at the federal and state levels, as well as between individual state authorities, which promote the most timely and comprehensive response possible to new pandemic-related risks. First of all, they concern the coordinating function of Unit EA 6, a unit of the Federal Ministry of Finance whose activities focus

on combating fraud in cooperation with OLAF and which cooperates with the Federal Ministry of the Interior in combating corruption. The coordinating function is initially evident in the regular exchange in the area of Recovery Facility/Covid 19 between the Unit and the Federal Criminal Police Office (BKA), a higher federal authority subordinate to the Federal Ministry of the Interior, which, among other things, acts as a central office, i.e. as the information and communication centre of the German police (sect. 2 of the Federal Criminal Police Office Act (BKAG)) and, within the scope of its competence (sect. 4 BKAG), also takes over criminal prosecution in the offence area of white-collar crime. With a view to intensifying the existing coordinating function of the Unit in this respect, the European Public Prosecutor's Office could assume a key function in the future: The forwarding of information on new criminogenic behaviour or new methodologies to the Unit would allow a forwarding to the individual federal states via the Unit itself or the BKA (Federal Ministry of Finance - Unit EA 6, answer 6, D4 Databook BETKOSOL). Through the Irregularities Reporting System (IMS), the Unit is also in direct contact with the administrative authorities of the federal states, as it acts as a "country office" in this respect, i.e. as an interface for reporting issues (Federal Ministry of Finance - Unit EA 6, answer 1, D4 Databook BETKOSOL). Finally, it coordinates the work of the individual investigating authorities by identifying the respective procedures.

In practice, inter-agency cooperation between the tax authorities on the one hand and the law enforcement authorities on the other, has also proven successful. For example, the Hamburg Internal Investigations Department (DIE), which is responsible for official offenses and corruption, employs a specialist from the internal audit department of the Hamburg tax authorities on a secondment that usually lasts two to three years. This specialist is the permanent contact person for the tax authorities with regard to reportable suspicious cases, checks corruption cases for their tax relevance and controls control notifications to the tax authorities (DIE, answer 9, D4 Databook BETKOSOL). An even further intensification of cooperation between different authorities could help to uncover new risk structures more quickly.

Finally, the cooperation between special units of the public prosecutor's office and the police is also important for the identification of new (pandemic-related) risks. In Hamburg, they are recognized for the area of corruption – on the part of the public prosecutor’s office – by the department 57 responsible for corruption offenses and – on the part of the police – by the DIE. The high degree of specialization in the police and the public prosecutor's office, which has meanwhile been achieved in many federal states, facilitates the recording of often complex criminogenic behaviour in the area of fraud and corruption (see Public Prosecutors Office - Corruption Department (Hamburg), answer 2, D4 Databook BETKOSOL).

Overall, the use of the Information Management System (IMS) should prove useful in the context of identifying new (pandemic-related) risks, as the number of reports - or more precisely, a significantly high reporting rate - can be used to identify any need for action (Federal Ministry of Finance - Unit EA 6, answer 2, D4 Databook BETKOSOL).

References

- Robaczyński, W. (2021). Dyscyplina finansów publicznych a stan epidemii – znaczenie nowych przepisów dla organów kontroli. In Kontrola Państwowa, No. 5, (pp. 20-35).
- Serowaniec, M. (2021). The (extra)ordinary state Of COVID-19 pandemic in Poland. In M. Löhnig, M. Serowaniec, Z. Witkowski (eds.), Pandemic Poland. Impacts of Covid-19 on Polish law.Vienna: Vandenhoeck & Ruprecht Verlage, (pp. 9-12).
- Fabbrini F., Next Generation EU. Il futuro di Europa e Italia dopo la pandemia, Bologna, il Mulino, 2022.
- Macchia M., La goverance del Piano di ripresa, in Giornale di diritto amministrativo, n. 6/2021, pp. 733-741.

- Caporale F., Le modifiche alla legge sul procedimento amministrativo, in Giornale di diritto amministrativo, n. 6/2021, pp. 772-778.

6. The adding value of the supranational level. Insights from EU institutions

The results from the EU institution's interviews partially confirm what has emerged in the previous paragraphs for the National levels. Three points seem to be relevant.

First, many interviewees agree on the heterogeneity among MS in the protection of the EU financial interest. For example, in the case of the EU Commission (EC), it is observed: «An important difficulty is that several Member States have not adopted a national anti-fraud strategy. This might in fact create coordination problems for the collection of comparable data on irregularities and cases of fraud from the Member States» (EC, answer 3, D4 Databook BETKOSOL). Also in the case of OLAF(1), it is reported: «From our point of view, however, we notice authorities from different Member States have different approaches to the protection of the EU financial interests in relation to fraud and other criminal behaviours in particular. Some deploy significant resources and prioritise investigation and prosecution of such behaviours, while others do not» (OLAF(1), answer 1, D4 Databook BETKOSOL). In the EIB's interview, as well, the following point arises: «With respect to the Member States, there are significant differences in the approach to the protection of EU financial interests. There are different sensitivities and degrees of effectiveness of legislative instruments, and consequently different results are obtained. Some countries also have fewer resources and there are political choices linked to how much they want to invest in the various phases – administrative, judicial, etc. – of the process» (EIB, answer 1, D4 Databook BETKOSOL).

Secondly, normative complexity is also an element of common observation, together with the problematics of the public procurement sector. For example, both the elements emerged from the OLAF(1) interview, about the main difficulties detected: «Breaches of public procurement rules. Complex rules which are often wrongly applied by managing authorities» (OLAF(1), answer 7, D4 Databook BETKOSOL). Also, in the case of ECA, the interviewee observes: «[...] Instead, action should be taken on European rules on controls to improve, through clearer provisions, audit actions and transparency and control over the management of European funds. This is also because, apart from fraud, many irregularities are unintentional and derive from the objective difficulty of interpreting the rules governing the disbursement of European funds. [...]» (ECA, answer 4, D4 Databook BETKOSOL) and: « [...] the main objective for improving the area of control of EU funds should be to simplify control rules and methodologies [...]», then recalling the ECA's Report no. 2 (2020) *Law-making in the European Union after almost 20 years of Better Regulation* (ECA, answer 9, D4 Databook BETKOSOL). Finally, the same interviewee also adds: «The main irregularities concern to a general extent the procurement sector [...]» (ECA, the answer 6, D4 Databook BETKOSOL).

Thirdly, regarding the effects of the pandemic, the EU institutions interviewed see in the emergency of the last years the risk of new frauds. For example, this observation is indirectly proved by EC's answer 5, even limited to the new internal Anti-Fraud Strategy: «[...] The Action Plan considers, inter alia, Covid-related risks». Some elements on the increase of frauds during the pandemic in MSs are provided by the EPPO's reference point, even though: «There has been no particular change in the types of fraud [...]» (EC, answer 5, D4 Databook BETKOSOL). The interviewee considers the phenomenon as physiological, also for the future, especially with the advent of NGEU. Nevertheless, during the pandemic, innovative and different investigative techniques in the European scenario were tried out, for example, market analysis or analysis of moving capital and of opening and closing of companies. Similarly, the interview from OLAF(2) reports that the situation of the first stage of the pandemic has certainly inspired new fraud schemes, considering the emergency, the institutional work from remote and the novelty of many new instruments (OLAF(2), answer 5, D4 Databook BETKOSOL). Again, on the advent of NGEU, it is also interesting to highlight the answer 6 by, again, OLAF(2), according to which the protection of NGEU's funds puts OLAF at the centre of a complex

web that, however, sees the national authorities in the first line of control. This element stresses, even more, the importance of National legal systems for the protection of the EU financial interest in the future. On this point, the interviewee from the ECA has provided a critical opinion: «The ECA's field missions were disrupted by the pandemic (technological tools were used to overcome this) [...]. Indirectly, the pandemic has led to a considerable increase in work for the ECA, as the financial amount to be audited has almost doubled with the approval of the Next Generation EU (NGEU), which provides for very short timeframes, with the related risk of fraud. The complexity of the regulatory framework has also increased as the NGEU has created a new budget management model in addition to the previous ones, with the commission checking that milestones have been satisfactorily met before allocating funds, while it is not clear whether there will be a subsequent legality/regularity check or just a general check on the effectiveness of each national control system» (ECA, answer 5, D4 Databook BETKOSOL).

It is also possible to elaborate on additional information from the European interviews, in comparison with the National ones.

There is the impression of an urgent need for coordination among EU institutions, considering the way in which the interviewees remind each other. To begin with, all the subjects involved in the protection of the EU financial interest are clearly summarised in the OLAF(2)'s answer no. 3: «The protection of the financial interest of the EU involves working with a wide range of stakeholders at the European level (Commission, European Court of Auditors, the EPPO, Eurojust, Europol, Frontex), at the level of the Member States (administrative, enforcement and judicial authorities, in some cases down to the regional level) and on the international scene (authorities of third countries, World Customs Organization, INTERPOL, AMERIPOL, etc)». Considering this complex network, a first governance issue arises in the relationship between OLAF and EPPO. For example, OLAF(2) observes in its interview that the complementarity between EPPO and OLAF is a strong asset (answer 6). In fact, prevention, detection, and correcting irregularities need the support and knowledge of cross-border phenomena and OLAF brings those into the picture. The same goes for ex post controls carried out by the Commission, and later for prosecution by the EPPO or by the national judicial authorities. According to this interviewee, the first months of cooperation between OLAF and EPPO have yielded good results. Also, the EIB, through the words of the Head of Investigations and Exclusion Unit, sees in positive terms the cooperation of EIB and OLAF (answer 3). A quite different opinion can be derived from the EPPO's interview: «It should be noted – with respect to the relationship between EPPO and OLAF – that when EPPO asks for OLAF's support OLAF must get used to working with prosecutors with a different type of approach and with different timeframes and methodologies within a legal framework that however continues to qualify OLAF as an administrative authority. It will therefore take time to assimilate those changes» (EPPO, answer 4, D4 Databook BETKOSOL). Hence, while EPPO considers OLAF as a "support" institution, the latter still perceives itself as a policy-making body: « [...] Investigation service with a strong policy-making role, therefore translating investigative experience in fraud-proofing and anti-fraud policy-making» (OLAF (1), answer 2, D4 Databook BETKOSOL). In the case of the EC, the interviewee sees positively, but in perspective for the future, the establishment of the EPPO, especially thinking about the benefits of its coordination with Europol and its database (EC, answer 6, D4 Databook BETKOSOL). Europol is mentioned also in the BEI's interview, when it is observed that an agreement is being signed with Europol for the exchange of information and EIB has bilateral agreements with various judicial, investigative, and administrative bodies around the world. An agreement has also already been signed with EPPO, concluding with: «Cooperation is essential» (EPPO, answer 3, D4 Databook BETKOSOL). In addition, the interviewee from the ECA mentions problems of coordination among other EU institutions, such as the presence of the European Stability Mechanism and other actors operating outside EU sources that do not facilitate the ECA's task, together with the need to better define the boundaries of the respective roles between the ECA, the EIB and the European Central Bank (ECB). Finally, a lack of coordination is perceived as urgent also between the National and the European level. The European Prosecutor observes, for example: «The main problem EPPO faces is related to cooperation with national authorities, which are giving different answers both in providing EPPO with the necessary human resources and with respect to the practical support to carry out investigations, as well as in relation to institutional cooperation [...]» (EPPO, answer 3, D4 Databook BETKOSOL but, in similar terms, also ECA, answer 3, D4 Databook BETKOSOL).

Another observation to report from European interviews is the opinion according to which a further harmonisation among MS at the Criminal Law level would be welcome, especially in the words,

again, of the European Prosecutor: «[...] A further problem linked to cooperation between EPPO, and national authorities is the lack of common standards in the Member States with regard to criminal procedure. Many countries are therefore not used to dealing with a prosecutor such as the one of the EPPO because they adopt different procedural models. The EPPO is therefore called upon to operate with different procedural rules in each country, due to the absence of a European Code of Criminal Procedure, and of a European judicial police force, which would provide a common framework for the procedural rules applicable to EPPO investigative activities» (EPPO, answer 3, D4 Databook BETKOSOL). The same point is also re-proposed in one of the last questions, when he observes, in view of the future, the urgency of standardising the criminal procedural rules relating to EPPO activities. Harmonisation has its limits because, of course, the directive can only rule within certain limits but, at a certain point, there will be a need to legislate directly by means of regulation. In particular, he suggests the idea of a European code of criminal procedure, adding that the same lawyers themselves use to ask for it. In fact, they find the situation very difficult especially when EPPO criminal proceedings can move from one country to another (EPPO, answer 9, D4 Databook BETKOSOL).

In the end, the EPPO's interview confirms the relevance of the protection of the EU financial interest for the future: «Moreover, from an operational point of view, the value of the financial interests at the heart of EPPO's activity is very high, higher than expected» (EPPO, answer 6, D4 Databook BETKOSOL). From the interview by OLAF(2), however, it is also quite interesting the alternative perspective according to which the EU system itself can contribute, as well, to the protection of the National financial interest, even though just indirectly: «The work of the Office can also protect, albeit indirectly, the financial interest of the Member States in certain situations where this is linked with the financial interest of the EU (for example, Value-Added Tax, excise duties, expenditure programmes co-financed by the EU and the national budgets)» (OLAF(2), answer 1, D4 Databook BETKOSOL). Hence, studies on the topic should address the phenomenon from this double direction. On the one side, there is the efficiency of national systems for the protection of the financial interest to guarantee the European one; on the other side, the efficiency of the European legal order, in terms of governance and legal framework with regard to the protection of its own financial interest, can guarantee, in a certain way, also the National one (probably more on the revenue side, considering the evolutions expected).

If this sort of communicating vessel system can be observed, this is indeed an element that even more proves how the difference between the National and the European financial interest - the core of the theoretical notion and not the way in which the protection is fulfilled - tends to blur as the European integration goes by.

Annex I

A.1 Figure 1 EU Institution

EU Institutions	*Office*
European Commission	***Senior Market Analyst at Unit L4 (Investment program management) of ECFIN***
EPPO	***Deputy European Chief Prosecutor - European Prosecutor***
OLAF (1)	***Head of Unit in charge of Anti-Corruption***
OLAF (2)	***Director – Revenue and International Operations, Investigations & Strategy (OLAF)***
European Court of Audit	***Judge of European Court of Audit***
European Bank of Investments	***Head of Investigations and Exclusion Unit. Inspectorate General/Investigations Division, EIB***

A.2 Figure 2 Member States Institutions

Level	*Italy*	*Poland*	*Belgium*	*Germany*
Institutions: National	· *Coordinator of Technical Secretariat Committee for the Fight Against Community Fraud (Italian A.F.C.O.S.) - Department for European Policies - Prime Minister Office*	· *Ministry of Investment and Development – Department of Innovation and Development Support Programmes - Division of System Control (Head of Division)* · *Supreme Audit Office – Regional Branch in Bydgoszcz (Deputy Director of Branch)*	· *Federal Ministry of Justice*	· *Federal Ministry of Finance* · *Department of the Interior and Sport; Internal Investigations Department (DIE)* · *Corruption Department of the Hamburg Public Prosecutor's Office*
Institutions: Regional/Local	· *Manager - Public Procurement Regulation Office (ANAC)* · *Regione Lazio – Director of the ERDF, ESF and Internal Control Regional Audit Directorate* · *Roma Capitale – European Development and Funding Projects Department (Head of Department)*	· *Marshall Office of the Kujawsko-Pomorskie Voivodeship – Control Department for Implementation of European Funds (Deputy Head of Department)* · *Regional Chamber of Audit in Bydgoszcz (President of Chamber)*	· *Flemish Agency for Innovation and Entrepreneurship* · *Flemish Audit Authority for EU-structural funds*	· *Administrative Authority of the European Social Fund (Bremen); ESF certifying authority*

Target Groups	***o Students*** ***o CGIL delegate National Secretariat (Precarious Research) and CGIL Lazio Education and research section*** ***o Head of Legislative Affairs Unit, Confindustria*** ***o General Director, Fondirigenti. Former Director of the Italian Territorial Cohesion Agency (Agenzia per la Coesione Territoriale). Former Director Regional Policies (Politiche regionali), Confindustria***	***o Students*** ***o The Independent Self-Governing Trade Union "Solidarity" – Department of European Programmes (Head of Department)*** ***o Lewiatan Confederation - Polish Confederation of Private Employers (Deputy Director-General)***	***o Students*** ***o EUTUC***	***Students***

Annex II

A.3 Figure questionnaire institutions

Questionnaires for EU and MS institutions	
SECTION I	***A. BACKGROUND***
1.a: ***If relevant, do you think there are differences between the way in which the national and EU financial interests are protected in your institution (i.e. the presence of specific offices, HRs, expertise). If not, why in your opinion?***	
2.a: ***If relevant, which kind of control procedures are led in your institution about the management of EU funds and the guarantee of the protection of the EU financial interest?***	
3.a: ***In your and of your institution's daily-work, which are the main difficulties/obstacles you have in the achievement of the protection of the EU financial interest? (i.e. coordination with other institutions)***	
SECTION II	***B. GENERAL UNDERSTANDING OF THE PHENOMENON***
4.b: ***According to your experience in your institution and in general in the field, what can your country (and/or institution) work on to improve its skills in the EU funds management and in contrasting frauds? (i.e. reforms, best practices, horizontal public cooperation)***	

5.b: ***According to your working experience, do you perceive some changes in the protection of the EU financial interest after the outbreak of the pandemic? If yes, can you indicate some examples? (i.e. new risk of frauds; new governance systems; the necessity of new controls)***
6.b: ***Do you expect relevant changes in the way in which your institution will work in the future, about the protection of the EU financial interest? (i.e. considering the NGEU programme; or the recent birth of the EPPO)***

SECTION III	***C. EXAMPLES-CONCRETE PRACTICES-BEST PRACTICES***

7.c: ***Can you indicate, according to your experience and the functions of your institution, some concrete examples of the most recurrent irregularities, risks and frauds affecting the EU financial interest?***
8.c: ***Have you knowledge of recent case-law that could be considered relevant for the topic at stake?***
9.c: ***Are there any relevant best practices in your knowledge that you want to suggest/share for the purpose of the research?***

A.4 Questionnaire target groups

Questionnaire for Target Group	
Section I	***A. BACKGROUND***
1.a: ***According to your data (if any) your organization of how many European funds have benefited in the last 5 years? If so, which ones?***	
2.a: ***If relevant, do you think there are differences between the way in which the national and EU financial interests are protected in your institution (i.e. the presence of specific offices, HRs, expertise). If not, why in your opinion?***	

SECTION II	***B. GENERAL UNDERSTANDING OF THE PHENOMENON***
3.b: ***Was the economic endowment of the measures allocated by the EU and Member States in your sector sufficient?***	
4.b: ***Do you promote actions to make your members aware of the correct use of EU funds? If so, can you give an example?***	
5.b: ***According to your working experience, do you perceive some changes in the protection of the EU financial interest after the outbreak of the pandemic? If yes, can you indicate some examples? (i.e. new risk of frauds; new governance systems; the necessity of new controls)***	

6.b: ***Do you expect relevant changes in the way in which your organization will work in the future, about the protection of the EU financial interest? (i.e. considering the NGEU programme; or the recent birth of the EPPO)***	
SECTION III	***C. EXAMPLES-CONCRETE PRACTICES-BEST PRACTICES***
7.c: ***Can you indicate, according to your experience and the functions of your organization, some concrete examples of the most recurrent irregularities, risks and frauds affecting the EU financial interest?***	
8.c: ***Has your knowledge of recent case-law that could be considered relevant for the topic at stake?***	
9.c: ***Are there any relevant best practices in your knowledge that you want to suggest/share for the purpose of the research?***	