



**BETKOSOL**  
Better Knowledge for Better Solutions

Hosted online by Ghent University, in collaboration with LUISS University

# REPORT KICK-OFF MEETING BETKOSOL PROJECT

Better knowledge for better solutions

28 January 2021



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



Ghent University hosted the kick-off meeting for the BETKOSOL project.

'Better Knowledge for Better Solutions' is a research project in cooperation with and lead by the LUISS University and funded by the European Union's HERCULE III Programme.

The BETKOSOL project aims to investigate the limits and perspectives of the current regulatory framework for the fight against fraud affecting EU financial interests, particularly in the social, health, and economic sectors, and to evaluate the possible effects of the Covid-19 crisis on this status quo.

## GERT VERMEULEN

*Director of Department of  
Criminology, Criminal Law and  
Social Law , Ghent University*

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## PAOLA SEVERINO

*Vice-president, LUISS  
University*

# WELCOME ADDRESS



Prof. Vermeulen, speaking in his capacity of Head of Department of Criminology, Criminal Law and Social Law at Ghent University – inclusive of the LIISA research institute of Prof. De Becker and Prof. Jorens – said he was pleased to open the Conference for several reasons.

First, the research project is an example of a great international collaboration between top universities, stressing that it is made with very important partners such as Luiss and Torun.

Second, Prof. Vermeulen shared a personal memory, explaining that he arrived at university just before the Maastricht Treaty was concluded, in the ‘early days’ where the foundations for the protection of the budget and the financial interests of the EU were laid, with the so called ‘PIF Convention’ of 1995 and the establishment of agencies like Europol. Therefore, he said, it is topical to try to take stock of where we are after more than a quarter of a century in this domain.

## GERT VERMEULEN

*Prof. of European Criminal  
Law,  
Ghent University*

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Prof. Vermeulen pointed out also that historic steps have been taken recently with the conditionality mechanism which underlies the multiannual financial framework and the NEXT Generation EU to allow the economy to recover from the COVID-19 crisis. Thus, he expressed appreciation for the different focus of the research on health, on economy and employment and on environment, believing that the three cases for the project are particularly well chosen.

Prof. Vermeulen closed his opening remarks expressing his congratulations and saying he is sure that the project will lead to new ideas – *better knowledge for better solutions.*

# WELCOME ADDRESS



Prof. Severino opened her welcome address saying she is very glad that Luiss University is hosting the

Betksol project, this being an important international project aimed at investigating the prospects for improvement of the current regulatory framework on the fight against fraud affecting the EU's financial interests, in particular in the social, health, and economic sectors. Indeed, combating fraud that affects the EU's financial interests is certainly of the utmost importance, and it is even more true in these challenging times. Needless to say, the Covid-19 crisis has raised the attention on the topic, due to the potential fraud that could arise from the injections of liquidity which are necessary to restore growth and to protect businesses and families from the difficulties caused by the pandemic. The Next Generation EU programme provides for a massive recovery fund of 750 billion euros in loans to support Member States hit by the COVID-19; thus, to avoid misappropriations in the distribution phase and an illegal use of the funds, Prof. Severino underlined that it is fundamental to establish rules that simplifies the credit distribution phase, while at the same time intensifying the verification phase, providing for severe sanctions whenever breaches occur.

## PAOLA SEVERINO

*Prof. of Criminal Law,  
Vice president of LUISS  
Universiy*

Nevertheless, to safeguard the EU's financial interests, significant interventions are also fundamental at an administrative level: as a matter of fact, Member States need a Public Administration able to manage the European funds. Prof. Severino mentioned some of the measures that could be adopted in this respect, such as reorganising the state administration to find solution for inefficiencies; speeding up and simplifying public administration processes; mitigating the punitive excesses that have caused - over time - a reluctance on the part of public officers to take decisions; hiring competent personnel. Digitalization, transparency, specialised training initiatives and generational change are key factors in reaching these objectives.

# WELCOME ADDRESS



Prof. Severino added that academia as well can play an important role in tackling these huge challenges. The Betkosol research project is a virtuous example, at least for two reasons: it is interdisciplinary in nature and it adopts a comparative approach, necessary to identify the common basis to contrast fraudulent behaviors in the European Union.

Prof. Severino concluded stating that, also thanks to the extraordinary expertise of the distinguished speakers that have accepted the invitation to participate, the kick-off event will serve as an important platform of discussion to analyse existing problems and to elaborate concrete solutions.

**PAOLA  
SEVERINO**

# INTRODUCTION TO THE BETKOSOL PROJECT



1. BETKOSOL is an acronym for “Better Knowledge for Better Solutions”. We need no further explanation to understand the meaning: we just need to know and understand better how the organisation and procedures in the different European nations work in order to find solutions and, in particular, to protect the EU’s financial interests.

Two figures can help us to clarify the extent of the problem, even before the pandemic.

The so-called PIF Report of the European Commission says that detected fraud in EU spending in 2019 amounting to 381.4 million Euro, or 0.3 % of total payments from the EU budget.

And this was despite the fact that the fight against fraud is becoming increasingly effective. The 2019 OLAF Report shows that the European Anti-Fraud Office (OLAF) concluded 181 investigations in 2018 and recommended the recovery of 485 million Euro to the EU budget.

The pandemic has worked its way into this already critical framework.

The starting point of the project is the assumption that the European Union is experiencing the most serious crisis in its history.

**ALDO SANDULLI**

*SP.I. of BETKOSOL Project,  
LUISS University*

*Prof. of Administrative Law*

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# INTRODUCTION TO THE BETKOSOL PROJECT



However, as we know, “In the midst of every crisis lies great opportunity”. By raising funds on the capital market, Next Generation EU aims to help repair the economic and social damage caused by the pandemic. The Recovery and Resilience Facility (RRF) seeks to build a more green, sustainable, digital, and resilient Europe, suited to the challenges of the contemporary age. This plan goes in the direction of closer European integration for two reasons above all others: on the one hand, it is the first step towards European fiscal union; on the other hand, thanks to the 750 billion Euro of this plan, the European Union is about to become the largest financial intermediary on our continent, and the particular thing is that, this time, the stakeholders of this public intervention in the economy will be the Member States.

The main problem is that money will flood into the coffers of the Member States, and it will have to be spent in the next three years. For example, approximately two hundred billion euro will be given to Italy.

## ALDO SANDULLI

How will the Italian Government guarantee that it will be able to spend this enormous sum in three years when it is struggling to spend less than half in twice the time? We must take in account that Italy was able to spend only 38% of the 45 billion Euro of the previous MFF (2014-2020). The need to speed up procedures will open up a huge problem regarding the risks of corruption and fraud affecting European financial interests. We have to consider, in addition, that Italy is already in fourth place in Europe for number of frauds in the management of EU funds, with 4,415 cases detected by national authorities.

# INTRODUCTION TO THE BETKOSOL PROJECT



Mechanisms will have to be devised to ensure that the very best implementation of fundamental principles of administrative action in European law: transparency, efficiency, simplicity, participation, non-discrimination, and, above all, proportionality. At the same time, the responsibility and competence of public officials will be the bedrock of the success or failure of the financial intervention plan.

As for administrative scrutiny, it will be necessary to look into what innovations are needed to meet the new requirements.

The fact is that administrative scrutiny is already wide-ranging and penetrating: just think of all the work of the national anti-fraud and anti-corruption authorities against corruption and the inspections of the Court of Auditors, not to mention performance audits. Will this whole surveillance system need to be reformed? How will the special supervision that will presumably have to be introduced fit in with the existing system? Will special supervision be added to it? Or will it replace it? How will this be reconciled with the need for fast administrative action?

## ALDO SANDULLI

On the criminal law side, the PIF Directive emphasized an European inquisitorial function and 22 Member States have already implemented the Directive. It will then be necessary to think about instruments and mechanisms to deal with these peculiar situations and, in particular, to understand whether the new EPPO will work effectively, and in a manner suited to the new requirements. But it will also be necessary to understand why some countries, including Poland, have not joined the EPPO and how they think they can deal with such cases of crimes undermining the Union's financial interests, which require common countermeasures. In this respect, it will also be interesting to see how far European integration is being strengthened in the area of criminal justice, which is traditionally among the functions most jealously protected by the Member States.



# INTRODUCTION TO THE BETKOSOL PROJECT



2. The first question to be asked is what is the impact of the pandemic crisis on the ways the EU's financial interests are protected?

So the impact of the pandemic crisis will be significant, especially for the amount of funding and loans that will be related to the Next Generation EU. Not only for reasons of quantity (1825 billion Euro if we add it to the MFF 2021-2027), but also for qualitative and temporal issues. On the one hand, European loans will be linked, at least as regards the Recovery Fund, to the implementation of specific projects. On the other, as mentioned, European funding will have to be spent by 2024, so there will be very little time to complete these projects.

It will therefore be necessary to work on structural and functional reform at both European and State level as well as on a new narrative of anti-fraud rules to protect European financial interests.

In particular, the question arises as to whether the traditional composite administrative procedures typical of indirect administration in the management of EU structural and cohesion funds will have to be substantially modified. An example

## ALDO SANDULLI

would be a project financed through the Recovery Fund for the construction of a national strategic public work or a national strategic digital infrastructure. To this end, for example, the implementing entity will have to hold tenders and will most probably have to operate on a derogation basis in order to meet the deadline. Speeding up and simplifying procedures and operating outside the traditional procedural guarantees could cause many disruptions. These different methods could lead to corrupt practices, favour organised crime, and make inspection and supervision more difficult. And this would create problems of administrative scrutiny and criminal investigation in relation to these new organisational and procedural arrangements.

# INTRODUCTION TO THE BETKOSOL PROJECT



3. Only a few final words on the main contents of the project.

I have already explained at the beginning what the mission is.

I would just like to say a few words about the research stages.

The first part of the project is dedicated to monitoring the current situation from the point of view of European and comparative law.

It will piece together the legal platform regulating European funds, particularly in the areas most affected by the pandemic, and European policies aimed at combating fraud and protecting the Union's financial interest. A number of case studies will also be examined, focusing mainly on European policy measures to protect social rights.

On the other hand, the Belgian, German, Polish, and Italian systems will be examined from the point of view of comparative law, especially the systems of administrative and criminal surveillance, as well as the coordination mechanisms between levels of government, institutions, and control authorities, including the regulatory frameworks and the role of anti-corruption authorities in the different legal systems.

## ALDO SANDULLI

In addition, the ability of the different countries to spend European funds and to manage indirect administration procedures will be studied, with the help of case studies, focusing too on social policy sectors.

4. The last part of the project aims to provide some guidelines to improve the detection of fraud and irregularities. For example, one of the aims is to suggest how to shape procedures under the new multiannual financial framework ex-ante or in itinere and also how to prevent fraud, specifically in the social sectors.

Moreover, the project aims to foster the development of specific legal tools in the field of financial protection from a comparative perspective (administrative control practices, monitoring the administrative capacity, systems of early warning by citizens, etc.).

# INTRODUCTION TO THE BETKOSOL PROJECT



In this way, the project will try to answer some key questions: are the European and current national tools sufficient? Is the interplay between them well-balanced? Or do they need to be improved, also considering that the EU has supporting competences in those sectors now under stress and that they will receive a large amount of money over the coming years (i.e., health care)?

Other important questions to which the project intends to respond are the following: will a future increase in fraudulent behaviour simply depend on the resources available, or do the new areas of investment have specific weaknesses? Again, when does the pressure of an emergency improve or worsen the ability of States, regions and cities to manage funds? Or, is (multi)regional and national participation a good deterrent to better performance in fund management, and so in fewer incidences of fraud? If not, does this mean that the weak point is national legislation with regard to fighting irregularities and crime, strengthening European competence?

## ALDO SANDULLI

Lastly, a strategy to improve the long-term outcomes of the European anti-fraud policy will be proposed to face the risks that the new health crisis will reveal. The main focus will be on the functioning of:

- 1) a shared administration to prevent fraud;
- 2) a territorial control network;
- 3) inspection activities to detect a (limited) number and type of cases to be addressed by OLAF and EPPO.

5. What conclusions can be drawn from the research? It is difficult to say at this early stage. One can only speculate. Previous crises experienced by the European legal system have always shown that these major ruptures lead to abandoning previous paradigms and imply the construction of new pathways and lines of development.

# INTRODUCTION TO THE BETKOSOL PROJECT



The European institutions responded to the economic and financial crisis of a few years ago with instruments pointing in the direction of banking union.

From this point of view, it will be necessary to understand what the new narrative will be in terms of instruments to fight corruption and fraud against the financial interests of the Union. One possibility is that we will move towards stronger integration in this sector too. With the Next Generation EU, the new types of funding alongside structural funds point the way to fiscal union, which may require the new means of oversight.

Stronger and more penetrating forms of cooperation will be required, such as innovations in the field of justice, through the work of the newly created European Public Prosecutor's Office (EPPO), which outlines - for the protection of the financial interests of the Union - a drive towards integration even in one of the areas that until now have typically been left to the Member States. BETKOSOL Project will be an highly innovative and challenging research in several respects.

## ALDO SANDULLI

On the one hand, because we will have to explore virgin territory, deriving theoretical elements both from the previous MFF empirical data and from the reality that is taking shape at the very time we are finding ourselves studying these phenomena. On the other hand, because it will allow us to operate at the crossroads between administrative law and criminal law, in search of the right balance between efficiency and safeguards. For all these reasons, it will be a very intense and demanding eighteen months of research. It is hoped that it can produce useful results in order to implement the European integration process and, albeit indirectly, enhance European social citizenship. And I hope that a number of useful research elements can be found already in this kick-off meeting, in which such distinguished speakers take part.

# PANEL I

## MFF: WHAT CHALLENGES FOR THE EU LEGAL FRAMEWORK?



Prof. Bilancia emphasized the impact of the EU financial and economic response to the COVID-19 crisis, both on the doctrine of conferred powers between the UE and the Member States and on the legal framework ruling the EU integration as such. The purpose was to stress issues which are intimately connected with the main focus of the BETKOSOL project.

Such an impact on the EU legal and institutional framework will be evident especially for the governance of the new financial competences following the implementation of the *Next generation EU program* and the *Next Long-term Budget 2021-2027 (MFF)*. For example, in facing unprecedented challenges, the EU system has needed to cope with extraordinary monetary policy measures by the ECB (Pandemic Emergency Purchase Program - PEPP); the first Eurobond emissions to implement the so-called SURE program, on labour related social rights; ESM financial resources for health policies; the Stability and Growth Pact - suspended as well as the system of fiscal rules related to the so-called Fiscal compact; State Aids.

## FRANCESCO BILANCIA

*Prof. of Constitutional Law,  
Chieti-Pescara University*

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In terms of future perspectives, it is important to remember, for example, the new Commission Project on the European Health Union, the discussion around Sustainable Development and the new Green Deal, or the centrality of other social goals that the new funds want to address, in a difficult balance between EU and Member States competences.

In this direction, there is the key issue of the balancing border between Competition Law and (new) European policies. The topic can be summarized under the following slogans: a more flexible scenario? More room for policy targets? Towards a 'functional' competition law? Competition versus sustainable development? New dimensions for the public sector to intervene in the economy?

# PANEL I

## MFF: WHAT CHALLENGES FOR THE EU LEGAL FRAMEWORK?



## FRANCESCO BILANCIA

Market rules versus the Financial Interests of the EU, with the impact of NGEU and MFF funding? And, hence, a matter of coordination among policies and actors?

Prof. Bilancia concluded his presentation with the suggestion of considering the fiscal and anti-fraud rules as part of the EU rule of law. He proposed a concept of financial sustainability of spending policies as part of the EU rule of law on economic issues. The so-called rule of law conditionality, in this case, could affect every Member State, and not only the ones dealing with a question of respect of the rule of law in terms of democratic deficit.



Prof. Della Cananea opened his speech proposing the following dilemma: EU Finances, Judicial Cooperation and Constitutional Traditions are an “Impossible Trio”?

Then, he presented briefly the history of European treaties, underlying the fact that the first generation of EU treaties emphasis on judicial review (1957), while the second generation, establishing the Court of auditors, sounds management of funds (1975), and in the end the third generation (2009) gives relevance to the implementation of EU law by public administrations as a matter of common interest (Article 197 TFEU). Nowadays, EU institutions and agencies shall have the support of an open, efficient and independent European administration (art. 298 TFEU). Incidentally, this is a legal basis for a codification of EU administrative procedures.

In terms of the protection of the European financial interest, the EU Court of Auditors (ECA) has been active since 1977 and it is in cooperation with national audit institutions, under the reinforcing provisions of the Treaty of Nice (2003).

## GIACINTO DELLA CANANEA

*Prof. of European Law,  
Bocconi University*

For example, the Italian Court of Auditors (ICA), created in 1861, has two functions: one of audit - in fact, there is a cooperation between ECA and ICA, i.e. in the field of the checks on structural funds; and the other judicial - the ICA as a judge of administrative liability, i.e. towards the State, for damages to public finances. If there is such liability, the judge exercises a broad discretionary power and issues a pecuniary sanction.



## GIACINTO DELLA CANANEA

The recent Taricco Saga demonstrates how administrative and audit cooperation between EU institutions and Member States can have consequences on judicial cooperation as well, also involving constitutional conflicts and the Court of Justice of the EU. In the case-law abovementioned, frauds affecting the financial interests of the EU were punished with criminal sanctions. However, national legislation lays down limitation periods liable to prevent the prosecution of infringements (prescrizione) but at the same time the EU law requested an adequate protection of EU finances. The highest Italian ordinary judge (Corte di cassazione) raised the issue whether the national constitution was infringed. Is there a blow to the national constitutional tradition, based on legality (art. 25, Const.)?

Hence, he asked to the Constitutional Court to declare or not the contrast with EU law. The latter sent a preliminary reference to the ECJ, that in its judgment of 5 December 2017 (Case C-42/17) dissented from AG Bot,

holding that “the principle that offences and penalties must be defined by law forms part of the constitutional traditions common to the Member States (non-retroactivity of the criminal law) and has been enshrined in various international treaties, in particular in Article 7(1) of the ECHR (§ 53)”, with the result that disapplication of national law may not bring to stricter criminal sanctions (§ 62).

As a result, the protection of the EU financial interest is already part of a continental legal common tradition - both under Administrative and Criminal Law - being it based on National constitutional traditions, as valorized by the treaties.



PANEL I:  
MANAGEMENT OF THE FRAUD RISK EU FUNDS.  
THE CASE OF EFRD AT BELGIAN NATIONAL  
LEVEL



## ALEXANDER DE BECKER

*Prof. of Labour Law,  
Ghent University*

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In Belgium, at national level, we have the Central Office for the repression of corruption (CORP) which plays a double role: investigation of the abuse of subsidies at national level notwithstanding where the funding authority might be; involvement in the prosecution of the abuses within the EU as the corruption takes place in Belgium.

I will highlight two specific levels (because it's something I learnt from experience) that you should combine within your administration for people working there: a preventive attitude besides the repression or the persecution which takes place by a central administration.

Preventive topics are quite important and now I'm looking at Belgium's way, at national level, to deal with specific issues. How to prevent fraud is something on which we have been thinking for all civil servants for quite some time. The first element, which is an element spread out over all UE and is also taking place at EU level itself, is the introduction of the so-called deontological codes. Which rules do you have to apply? Which rules do you have to follow?

So it doesn't concern the fact that they are rights or duties for civil servants. It deals more specifically with which choices have to be made or when.

For instance, it's quite important with regard to public procurement, but also with regard to subsidies because it's another reason why you can have a link with UE institutions previously or with the Belgium institutions. It should always appear in your mind as a civil servant that you have to take care of it. Better detection should be made through the Office for Ethics and Deontology in the Civil Service.

PANEL I:  
MANAGEMENT OF THE FRAUD RISK EU FUNDS.  
THE CASE OF EFRO AT BELGIAN NATIONAL  
LEVEL



## ALEXANDER DE BECKER

Repression or persecution can take place after somebody has made problems with public subsidies. We know how important whistleblower protection is. It doesn't exist at Belgium national level as it exists at EU level, as we see at level of OLAF. So it's an important element on which we need to act. On the other hand, as a personal experience that I want to share with you, you don't need whistleblower protection in an ideal world, obviously when things go well. But whistleblower protection is important for learning person and for the progression of the institution in order to take of the institution not to be involved in fraud issues. At national level, CORP (Central office for the repression of corruption) places an important rule with regard to repression of corruption. They have two sections: public procurement; fraud with subsidies. In conclusion, important steps have been set at Belgian level to deal with frauds. Prevention with ethical guidelines and deontological guidelines is very very important. Then there is the repression of frauds (included UE frauds) with enlargement of crimes (i.e. concussion, abuse of power).

They should actually guide people in how to act ethically and thus how to avoid the frauds that are going to take place. There are also Ethics guidelines and training for a civil servant which is provided with guidelines on conflicts of interest. And it's very important with all my respect for every civil servant. I've been given quite some training with regard to these issues to civil servants. You should be able to find the moment when troubles can appear and you should also be able to recognise the name from somebody you had a negative experience with in the past, which is a prevent element you should mention to one of your colleagues in order to prevent frauds. So it's an important and common topic which should be debated within your administration in order to prevent the taking place afterwards. Also with regard to subsidies, if you had a positive or negative experience with subsidies which you received before, it's important to taking into account that you might be busted already by that element. Those kinds of rules are taking into account in Ethics guidelines and perhaps also in deontological code where it is not already mentioned but it could be. Obviously we have also the repression issues.

## PANEL I:

# THE IMPORTANCE OF MEMBER STATES' ADMINISTRATIVE CAPACITY IN MANAGING AND CONTROLLING EUROPEAN FUNDS FOR PROTECTING THE EU FINANCIAL INTEREST



I will try to introduce you into the system of Flanders, because as you know Belgium is split up into different regions. I will try to give you a brief view of the way Flanders structured one of the EU funds and the fraud protection and therefore I'm taking the view of one of the smaller EU funds in Flanders which is European Regional Development Fund (ERDF).

In the anti fraud and control system of Flanders the main player is VLAIO (Agentschap Innoveren & Ondernemen) which is a Flemish agency responsible for the execution of the policy in the sector of innovation and entrepreneurship and which has been designed also as managing authority for ERDF program. Within this administration there are also separated divisions taking care of certifying authority and also of on-side controls and inspections.

It's interesting to see how many people are working on this not so much important program. In the managing authority there are 6 FTEs working on the financial management and the rest (about 15 FTEs people) working on the administration. On-site control is even more limited. There is 1.5 FTE. In certifying authority instead there are two FTEs.

## FREDERIK VANDENDRIESS CHE

*Prof. of Administrative Law,  
Ghent University*

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At the auditing side, which is a separate entity apart from VLAIO, there are 5 FTEs. It's interesting to see how many people are working on this not so much important program. In the managing authority there are 6 FTEs working on the financial management and the rest (about 15 FTEs people) working on the administration. On-site control is even more limited. There is 1.5 FTE. In certifying authority instead there are two FTEs. At the auditing side, which is a separate entity apart from VLAIO, there are 5 FTEs.

The new program has introduced what they call the three levels of approaching the frauds: prevention; detection; prosecution. What I have seen is that the main emphasis, at least in Flanders, is currently prevention.



## FREDERIK VANDENDRIESS CHE

Directing the Certifying Authority, it's interesting to see that they are formally divided but, from a practical point of view, both people working in the Managing Authority and in the Certifying Authority are just one desk away. On the Auditing Authority my research demonstrated that external control is working and that it's really external, at least in Flanders, and independent. Maybe the main attention point is that this control currently is too strict. So we have to look at the principle of proportionality that is also into account in the regulation and anti fraud measures. As far as I know, too little guides are given on what is meant by the principle of proportionality. When we look at the level of Flanders we see a large difference between the Managing Authority and Certifying Authority, on one hand, and the Auditing Authority, on the other hand.

What I have seen is that the main emphasis, at least in Flanders, is currently prevention. In particular: anti-fraud policy: zero tolerance; training employees to detect fraud; adequate system of controls: internal control (documents + on-site); NEW programme 2014-2020: Obligation to prevent fraud; fraud Risk Self Assessment Tool (FRSAT) - currently ongoing audit of this. When we look at the detection side of the approach, within such a small program, the tools that are available are quite overshoot. The European Commission is making available to the member States a datamining IT-tool called ARACHNE which is used by VLAIO in this program. My research has demonstrated that especially for small programs such tools, for small countries, just provide too many indicators. When we go to the persecution side, there are currently no frauds in Flanders. So there are no examples available. I think that further research should be necessary to determine if this is due to the fact that we in Flanders are very good citizens respecting all the rules or maybe we are too creative and we are able to circumvent the research and detection tools.

## PANEL I:

# THE IMPORTANCE OF MEMBER STATES' ADMINISTRATIVE CAPACITY IN MANAGING AND CONTROLLING EUROPEAN FUNDS FOR PROTECTING THE EU FINANCIAL INTEREST



The Managing Authority and the Certifying Authority try to focus only on the top problems while the Auditing Authority is going for 100% of complains, which makes in practise very hard for the Managing Authority to manage the problems of the program because the tools that it has, such as ARACHNE, are not adequate for small problems.

**FREDERIK  
VANDENDRIESS  
CHE**

PANEL II:  
HOW TO PROTECT THE EU AND EUROPEAN  
CITIZENS' INTERESTS?  
FROM EU INSTITUTIONS TO EUROPEAN CIVIL  
SOCIETY



The second panel is presided by Prof. Jorens, who said he is particularly pleased to participate in the session also because fraud is one of the topics very close to his research interests. Indeed, fraud is becoming more and more crucial on the agenda of both Member States and the EU, and there is a huge movement going on testifying a global interest for fraud in all matters.

In introducing the session, Prof. Jorens said that words like 'criminal law', 'administrative tools', 'economic interest' and 'social interest' are all present in the titles of the speakers.

Prof. Jorens highlighted that risks are very huge; for instance, looking at some figures, with reference to the EU structural and investment funds last year, it is calculated that approximately around 400 millions euros might be misappropriated or misused. Nowadays, these risks are also exacerbated by the COVID crisis; the EU is investing a lot of money to support Member States - e.g. with the SURE, the temporary support to mitigate unemployment risks, and one-third of this budget already given this year is assigned to two of the 'funding States' of Betkosol (Italy and Belgium), so it will be an interesting matter to look at.

## YVES JORENS

*Prof. of Social Law,  
Ghent University*

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Prof. Jorens considered that fraud prevention and detection should be addressed at all levels and throughout all expenditure and income cycles, as fraud often involves sophisticated schemes to conceal it, where the risk of non-detection is sometimes higher than for other irregularities. Consequently, antifraud systems should be efficient but also smarter and more sophisticated, as people committing frauds are becoming smarter and more sophisticated.

In that respect, Prof. Jorens stressed that the collaboration between all organisations is of utmost importance at every level - prevention, detection, enforcement and sanction.

He concluded his introduction, before giving the floor to the speakers of the session, emphasising that one of the main messages of the project will be the collaboration between different domains of law and different partners.

PANEL II:  
INCIDENCE OF FRAUDS ACROSS EUROPE: CRIMINAL  
LAW ASPECTS IN MANAGING EU RESOURCES AT  
NATIONAL AND SUPRANATIONAL LEVEL



Introducing his speech, Dr. Kessler said that it is an empirical and experiential presentation on the incidence of fraud across Europe. Starting from some data, Dr. Kessler recalled that OLAF recovered half a billion euros as a result of its investigation on fraud and irregularities, but he also noted other quite interesting data, i.e. that 1.9% of the amount paid on European structural investment funds and agricultural funds over the last 5 years have been detected as marked by irregularities or frauds; this means one-hundred and 30 billion a year. Also, as a result of OLAF investigations, 0.36% of the total amount paid by the Commission to the Member States in European structural funds and agricultural funds was actually recommended for recovery, given the irregularities and frauds.

Are these data representing the reality, or are they just what appears after OLAF investigations and Member States controls? Dr. Kessler mentioned some statistics from the last available Eurobarometer report, where 67% of the people interviewed said that corruption is widespread over the EU; and 31% of the businessmen interviewed answered that corruption has prevented their companies to win a public tender (not necessarily on EU funds).

## GIOVANNI KESSLER

*European Commission*

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Therefore, if the phenomenon is so widespread, one could argue that the above-mentioned percentage of around 0.4% may be not close to the reality. According to Dr. Kessler, the perception is that OLAF investigations and the reports from Member States are just scratching the surface of the reality: he said that when investigators succeed in detecting significant fraud or corruption cases, often this is done in an occasional way. Why does this happen? There are two main reasons.

First, the lack of interest - or the lack of willingness - of some Member States in detecting and reporting frauds should be mentioned, especially when it comes to EU funding. Indeed, if Member States detect fraud concerning EU funds and report them, they have to give back these funds; and sometimes, under current rules, even if the fraud is committed by a private entity or company, the funds have to be given back by the State.

PANEL II:  
INCIDENCE OF FRAUDS ACROSS EUROPE: CRIMINAL  
LAW ASPECTS IN MANAGING EU RESOURCES AT  
NATIONAL AND SUPRANATIONAL LEVEL



Also, the more a Member State detects and reports fraud on EU funds, the more this Member State is named and shamed at EU political level. This can have negative consequences in the allocation of future EU funds and often controlling authorities which are overperforming are given some kind of indication by their political stakeholders to 'calm down'. In addition, some Member States are not much interested in reporting and detecting because prominent national institutional figures or their families are structurally involved in the use of EU funds, and also in the misuse of EU funds (as seen in the media). Of course, this may affect the performances of domestic authorities in controlling and reporting on frauds. A second relevant reason is the lack of capacity of national authorities of detecting, and therefore reporting, on serious frauds and corruption affecting the use of EU funds. This could be due partially to the lack of skills in financial investigations, but the major issue is that this kind of crimes - especially corruption and economic crimes affecting EU financial interests - are of a transnational nature.

## GIOVANNI KESSLER

So they are mainly addressed by national authorities in a fragmented and limited perspective: from an investigative point of view, it is very difficult to detect fraudulent transactions which happen outside the Member State involved - it is almost impossible. The present situation of criminal investigations in Member States is rather patchy and not up to the challenge of transnational crimes, and corruption and fraud on EU funds in particular. A comprehensive strategy would necessarily encompass prevention, detection and sanctions. Criminal law tools are essential both in detection and sanction. In detection, Dr. Kessler said that the most pressing issue is to have in place real tools to ensure the transparency of financial flows - thus the issue of a national centralised bank account register accessible for investigators, also for the crimes at stake.





An independent prosecution is also needed – which is not always the case in all Member States – in order to overcome national fragmentation of investigative approaches which hamper the detection (think of the system of rogatories in the judicial cooperation, which is outdated).

According to Dr. Kessler, the solution is already here and is the establishment of the European Public Prosecutor Office (EPPO); but it is a big challenge, because it should not be another Eurojust, or a tool for better cooperation among national authorities investigating on the same issues; what is actually needed is to move from a cooperation model to an integrated model, where the criminal investigations on EU frauds belong to the EPPO. This would overcome many of the above-mentioned problems – such as fragmentation, difficulties on transnational crimes, independent prosecution.

In conclusion, on the substantive criminal law plan, Dr. Kessler considered that setting a minimum punishment for EU frauds would have been recommendable, but such a provision is not contained in the ‘PIF Directive’ as there was opposition by Member States. Hence, this is a point that could be evaluated for amendment.

**GIOVANNI  
KESSLER**



Dr. De Bellis centered her presentation on the role of OLAF, addressing four main conceptual strands: the scope and limits of OLAF's actions for the protection of EU financial interests; the shortcomings in OLAF's activity; the recent reform of OLAF regulation, in 2020; and the challenges ahead.

With reference to the first point, Dr. De Bellis outlined OLAF's origins and structure, then underlining that its scope is the one of fraud and administrative irregularities that can damage the financial interest of the EU. Therefore, the mandate of the newly established EPPO only partially overlaps with that of OLAF, in the sense that EPPO is focused on criminal matters only.

As to OLAF's functions, Dr. De Bellis emphasised that the specific area of action of OLAF is detection, as OLAF does not have any type of sanctioning function; OLAF issues reports and recommendations – administrative or judicial recommendations, to EU institutions or Member States depending on the type of management of the fund. Dr. De Bellis said that this specific aspect can help explain some of the limits of OLAF's action, which is the second step of the analysis.

## MAURIZIA DE BELLIS

*Prof. of Administrative Law,  
Tor Vergata University*

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Although OLAF conducted a high number investigations (over 5000) in its 20 years of activity, there is a mismatch between the amount of investigations conducted and the follow-up, as in the period between 2009 and 2016 investigations led to prosecution in fewer than half of the cases, and resulted in recovery of less than a third of the funds.

What are the reasons for these shortcomings and low effectiveness? The EU Commission and the EU Court of Accounts found that among the main reasons for dismissal, there are the following: evidence collected by OLAF is considered insufficient for prosecution (56% of cases); action investigated by OLAF is not considered a criminal offence under national law (22%); time limit for initiating criminal proceedings under national criminal law passed (14%).



As regards the reasons for a low recovery of the funds, the main to be mentioned are the following: ongoing criminal investigations or proceedings; insufficient evidence in OLAF reports; companies having already been liquidated by the time OLAF closes the case; the fact that debtors sometimes bring cases before the ECJ to recover part of the rejected costs and/or damages.

Other shortcoming concern the flaws in the guarantees for the inspected entities, such as the limits of judicial control in OLAF activities and flaws in the procedural guarantees (e.g. the limits of right to access to OLAF reports). Dr. De Bellis pointed out there is a link between the lack of guarantees and also the effectiveness of the investigation activity: indeed, evidence collected by OLAF can be considered invalid in the context of a national judicial proceeding. Moving to the responses to these shortcomings, Dr. De Bellis recalled that a Regulation has been approved in December 2020, to increase the effectiveness of OLAF's investigations and also to foster cooperation with the newly-established EPPO.

## MAURIZIA DE BELLIS

In this respect, OLAF has an obligation to report any criminal conduct to the EPPO without undue delay, and in the light of non-duplication, OLAF shall discontinue an ongoing investigation and shall not open a new investigation where EPPO is conducting an investigation on the same facts. At the same time, complementary investigations can be conducted under specific circumstances.

With reference to the strengthening of OLAF, Dr. De Bellis explained that the 2020 reform aims at simplifying the applicable law (e.g. establishing that only Union law shall apply to OLAF's investigations, and in particular the prior warrant requirement shall apply only when national officers assist OLAF and when an economic operator formally resists the inspection), as well as at broadening OLAF's powers (for instance, it shall have access to information stored also in privately owned devices, when used for work purposes).



Coming to the last point of the presentation, Dr. De Bellis discussed how effective this reform is in addressing the shortcomings in OLAF investigations and which are the challenges ahead, highlighting that there could be a clash between effectiveness and guarantees. Indeed, even if the newly established Regulation says that OLAF reports should have value of proof, what if these reports are taken without following national procedures that are recognised under national constitutions? A second challenge to be considered will be the type of cooperation between OLAF and EPPO, whose role will change the picture in a significant manner.

**MAURIZIA  
DE BELLIS**

PANEL II:  
FROM THE ECONOMIC INTEREST OF THE UNION TO  
THE SOCIAL INTEREST OF EUROPEAN CITIZENS:  
FIGHTING FRAUDS ON EUROPEAN FUNDS TO  
STRENGTHEN EUROPEAN SOCIETY



Prof. Vermeulen opened his speech underlining that financial fraud, corruption and embezzlement undermine citizens' trust in society, institutions and democracy, and that the EU is very vulnerable to citizens' distrust in this respect. Transparency and scrutiny when it comes to EU funds are crucial for the EU, and it is all the more valid when policies pertain to things which are very close to the citizens' level - such as unemployment, work, health or the environment, which are also the topics that have been chosen for the case studies of the project. It also explains well why there is no willingness any longer to continue the inter-Member State solidarity budget, without sufficient scrutiny - and the historic step taken with the adoption of the rule of law regulation in December 2020. It is a key step also for the perspective of society at large in order to regain trust in the rule of law and in the fact that breaches of Union law related to the implementation of the financial interest of the Union will be properly investigated.

## GERT VERMEULEN

*Prof. of European Criminal  
Law,  
Ghent University*

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It is important that this rule of law mechanism also stipulates that the principle of sincere cooperation between the Member States' authorities, be it administrative or criminal, with the OLAF and the EPPO, are components of that rule of law which is expected to be complied with.

Prof. Vermeulen added that another issue not being mentioned so far, but also important from the citizens' level, or from the authorities and employers in Members States and companies' levels, is the directive adopted in December 2019 on whistleblowers.

## PANEL II:

# FROM THE ECONOMIC INTEREST OF THE UNION TO THE SOCIAL INTEREST OF EUROPEAN CITIZENS: FIGHTING FRAUDS ON EUROPEAN FUNDS TO STRENGTHEN EUROPEAN SOCIETY



There are a lot of mechanisms for reporting by individual persons, citizens and workers and their proper protection against retaliation and this will likely be able to bring more cases forward and make more cases visible; the same goes for the protection of witnesses in that context - the EU is again considering taking another step, even in the context of the protection of criminal witnesses and collaborators with justice, which it previously, before the Amsterdam Treaty, lacked competence.

In sum, the rule of law mechanism and the conditionality which has been built in has very strong links with the subject matter; second, the protection of witnesses and whistleblowers is an important component.

Prof. Vermeulen said that a third component which also has to do a lot to with the rule of law and is, of course, the respect for the protection of procedural rights of suspect and defendants. Linked with that is data protection, as a guarantee at citizens' level to preserve the respect for the personal data of different sort of people involved in investigations (whether they are witnesses, collaborators, defendants, suspects).

## GERT VERMEULEN

Another key principle of data protection is the separation between different purposes. Administrative investigations typically have other purposes in comparison to criminal law investigation, and this is why the institutional landscape in Europe is extremely complex. Also the set of guarantees that apply to administrative investigations is not identical to the set of guarantees in criminal investigations and this is one the big issues that causes evidential problems in the end. Data protection impacts the gathering of information too, the production of operational or strategic intelligence for different purposes.

PANEL II:  
FROM THE ECONOMIC INTEREST OF THE UNION TO  
THE SOCIAL INTEREST OF EUROPEAN CITIZENS:  
FIGHTING FRAUDS ON EUROPEAN FUNDS TO  
STRENGTHEN EUROPEAN SOCIETY



Again, the landscape is complex, as there are specific rules for OLAF, the EPPO and more in general institutions. Prof. Vermeulen recalled that there is a new regulation 2018/1725 about data protection at the level of the institutions, whilst the administrative authorities are supposed to be bound in principle by the GDPR and the law enforcement authorities and the judiciary, especially in criminal matters, will have to comply with the rules of data protection law enforcement directive.

Administrative and criminal justice authorities also belong to different powers. It is not so simple and not so easy to have very efficient cooperation between administrative authorities and criminal justice authorities and make sure they comply with the procedural rights that are expected to be in place especially when people will be confronted with the case against them which may have punitive effects for them - and then the typical rules set that applies in criminal matters should be applied.

## GERT VERMEULEN

The so called 'PIF Directive' of 2017 enhances the importance of fundamental rights in the context of the criminal law combat against fraud, but also the right to liberty and security, the protection of personal data, the right to an effective remedy and to a fair trial, the presumption of innocence, the right of defence, proportionality and sanctions, ne bis in idem. So it is good that these rules have been emphasised recently. Moreover, Prof. Vermeulen referred to the updated OLAF regulation of 2020, as it introduced stronger guarantees to persons concerned by OLAF investigations but also rules that apply for investigations.

PANEL II:  
FROM THE ECONOMIC INTEREST OF THE UNION TO  
THE SOCIAL INTEREST OF EUROPEAN CITIZENS:  
FIGHTING FRAUDS ON EUROPEAN FUNDS TO  
STRENGTHEN EUROPEAN SOCIETY



However, in the end, even if the importance of administrative investigations has been often stressed – as they can be ‘lighter’ than criminal ones – the risk is to build in the criminal law protection also in the context of administrative investigations. Prof. Vermeulen said this raises the question whether we need to continue the consecutive operations – first administrative and after that judicial or criminal/judicial procedures. The new complementarity mechanism in the 2020 update of the OLAF regulation between EPPO and OLAF is to be seen as a good step in that respect.

In the context of European funds, there is a talk about procurement and corruption, VAT issues, but Prof. Vermeulen highlighted that also customs come into play. A brief comparison between the context of fighting fraud against EU budget, with OLAF and EPPO now – administrative and criminal prosecution afterwards – and the field of customs shows that, in this last case, investigations happen in parallel.

## GERT VERMEULEN

There is also a single information system for administrative and criminal justice purposes, information can also be shared with the EU bodies and in general the information sharing has a good architecture.

Prof. Vermeulen closed his speech with some critical remarks on EPPO, first recalling that nowadays there is the risk to have too many actors in place. The EPPO is not the model that the EU Commission wanted, i.e. a clearly supranational model, but instead a horizontal model as wanted by the Member States, overly complex in terms of structure and with many layers.



PANEL II:  
FROM THE ECONOMIC INTEREST OF THE UNION TO  
THE SOCIAL INTEREST OF EUROPEAN CITIZENS:  
FIGHTING FRAUDS ON EUROPEAN FUNDS TO  
STRENGTHEN EUROPEAN SOCIETY



Prof. Vermeulen seemed skeptical about the possibility of a flawless collaboration between OLAF and EPPO, being in favour of more clearly separated channels - administrative authorities for the recovery of money and the general compliance exercise and, in a very early phase, in parallel, the initiation of a well-coordinated criminal investigation with a strong role of EU bodies.

**GERT  
VERMEULEN**

# ROUND TABLE:

## THE VARIOUS POSITIONS TAKEN BY THE PARLIAMENT ABOUT THE ANTIFRAUD POLICY



### ALESSANDRO D'ALFONSO

*European Parliament policy analyst*

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In his analysis, Dr. D'Alfonso, focuses the attention on two points: the key role of financial management of EU resources and impossible developments of the EU budget; the importance that the European Parliament attaches to this aspect including the protection of Union financial interests.

First of all, in order to demonstrate how it changed the approach to EU resources in the last years, he states that until 1990 new tasks and new projects were matched with additional resources in the EU budget. On the contrary, in the last two decades, the focus has been above all on capping EU spending at 1% of the Union gross national linking, and when the Union was involved in new challenges or crises the better solution was to find instruments and lists, partially or totally, outside the EU budget. At this point, Dr. D'Alfonso explains that this phenomenon has been called the "EU budgetary galaxy". With the term "galaxy", we have the idea of the complexity of the system, since the scrutiny of how these resources are spent is few, transparent and democratic.

Secondly, with the Next Generation EU, the Doctor explains that the approach taken, and demanded by Parliament, has been different. In this respect, Dr. D'Alfonso starts to enumerate all the different challenges.

For instance, in 2021, the traditional EU budget will amount 1 hundred 65 billion euros both in commitments and in payments. However, due to the Next Generation EU this will be complemented by additional 2 hundred 85 billion euro of estimated commitments and some 75 billion euros estimated additional payments.

## ROUND TABLE:

### THE VARIOUS POSITIONS TAKEN BY THE PARLIAMENT ABOUT THE ANTIFRAUD POLICY



## ALESSANDRO D'ALFONSO

According to him, Parliament certainly wants to strengthen the framework for the protection of Union financial interests in various ways: through its legislation, simplifying some regulations, or also with the recent revision of the OLAF regulation and the establishment of EPPO to which Parliament granted its agreement. In fact, EPPO is a fundamental development for the protection of Union financial interests.

In conclusion, Dr. D'Alfonso says that Parliament recommended the Commission to increase technical support in the Member States where the management control system need to be amplified, and where there is not a participation of EPPO. Definitely, the EU needs more analytical capacity and more cooperation, trust in the EU budget and its potential to deliver will be the key in the future debates on the development of the EU budget.

This demonstrates that with such significant resources channelled through the EU budget, there will also be an increase in risks associated with the need to spend quite rapidly these resources to get the EU economy back on its feet.

In this scenario, Parliament, which is the protector of the financial interests, is a strong advocate of a well-managed budget with the focus on performance, and for this reason, Dr. D'Alfonso explains what positions it takes to reach its purpose. In the MFF negotiation, Parliament considers the introduction of a new regime of conditionality a significant element, in order to protect the Union financial interests. Thanks to this piece of legislation, if there are breaches of rule of law related to some topics, such as the functioning of managing and controlling authorities in Member States or the appropriate level of cooperation of Member States' authorities with EPPO and OLAF, funds from the EU budget can be suspended or cut. As the Doctor claims, this is a new building block of the landscape of the protection of the Union's financial interests.



Professor Parisi opens her analysis starting from an assumption: the European Union protects its financial interests in different and strong ways from criminal infiltration. The strengths of its system are the PIF directive, the EPPO regulation and the OLAF activity.

Then, she begins to reflect on the Italian situation. On one hand, the Italian government emphasizes the positive progress and how the Country has reduced the number of infringement cases for violation of European Union law. On the other hand, it cannot be hidden from the gravity and the pervasiveness of facts that arises from our national context in terms of a number of fraudulent activities to get EU's funds. In this regard, Professor Parisi relates to a judgment of the European Union tribunal of 25th January 2018 to demonstrate that there are many facts that contribute to the complexity of protecting the Union financial interests, which can affect the correct progress of the European integration process.

## NICOLETTA PARISI

*Member of ANAC*

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However, she argues that today the problem has become more complex in the face of the Union's efforts to help the Member States to face the economic and social effects caused by the pandemic. The initiative is made up of several financial instruments and the good result of the enterprise depends on how the use of financial resources managed from two different perspectives: from the perspective of the good effective use, i.e. the sustainability of the projects included by the States within the national plan; and from the perspective of the ability of the Union and its Member States to protect financial resources from the risks of their incorrect utilization, due to the attractiveness they represent for criminal organizations.



Continuing her analysis, Professor Parisi explains how the Italian national public prosecutor of anti-mafia, Doctor De Rao, can tell us important information about the criminal infiltration in the legal economy in the pandemic period. In order to fight these infiltrations, with regard to the use of the financial resources of the Union in this period, the first real serious task to perceive in our country is certainly that of designing a good national plan. Nevertheless, she brings us back to reality and states that, to follow this first objective, it is necessary to ensure that the projects contained in the national plan are sustainable, not only in theory but also in their complete execution.

According to the Professor, another way to defeat crime and to avoid the fraudulent use of the Union financial resources is to enhance the level of prevention. Beyond what the Union can do to perceive this goal, it is necessary that the State, Italy in this case, works to guarantee the good use of European resources.

## NICOLETTA PARISI

In this landscape, she mentions an important initiative proposed by the Catholic University, where she works, in order to avoid corruption and fraudulence. A group of scholars developed a project that is consistent with the mentioned “Hercule project”. She explains how this project functions and suggests working with it because together it is possible to reach good results. The Catholic University’s projects has two different purposes: it has a scientific dimension, which aims to develop a model for assessing the sustainability of the projects contained in the national plan and assessing their impact; and an apparitional dimension linked to it, in which public institutions and civil society are involved. Briefly, she claims that the working group of Catholic University follows the use and implication of the projects contained in the national plan for recovery and resilience.



In conclusion, according to professor Parisi this whole program needs also to avoid what is dangerous for Italy: there are many voices coming from European circles that question Italy's ability to manage the plan effectively and efficiently, for this reason it is important collaborate, work hard and avoid the cut of European resources.

**NICOLETTA  
PARISI**

## ROUND TABLE:

# THE EPPO, NEW ACTOR ON THE SCENE: OPERATIONAL CHALLENGES AND THE COORDINATION WITH THE EU AGENCIES AND THE NATIONAL AUTHORITIES



Dr Ceccarelli stressed that the EPO is facing a great challenge. Currently, there are many questions about what they will do, will they be effective in what they intend to do etc. Dr Ceccarelli emphasized that the EPO has not started its operations yet, and there are still many organizational issues to be done. One of the most important tasks that should be carried out before starting specific proceedings is working out a way of cooperation with other UE institutions that have a mandate or a mission that at least partially overlap with the mission of the EPO, it's about Europol, Eurojust and OLAF. With the starting of the operation of the EPO the fragmentic approach to protecting the financial interest of the EU in the field of investigation must come to an end. When it comes to Eurojust, the treaty says the EPO is created starting from Eurojust. Dr Ceccarelli emphasized that there are similarities in the structure, but also large differences in other fields, such as the fact that every prosecutor in Eurojust represents national desks, while EPO does not represent member states. Dr Ceccarelli said that it is easier with Europol, because in most cases it is a supporting agency. Europol provides expert opinions, analyzes, and does not have real operational powers. That is why the EPO will ask them to support, to provide expertise and will use the analytic capacity and especially information

## DANILO CECCARELLI

*EPPO Prosecutor*

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In the case of OLAF Dr Ceccarelli stressed that EPO has a different mandate, OLAF is an administrative body, while EPO is a criminal prosecutors office, but the core of the mandate is exactly the same, which is protection of EU financial interest. This can be problematic, which is why it is so important to define the rules of cooperation.

Dr Ceccarelli drew attention to the critical remarks regarding the structure of the EPO. He confirmed that the allegations may be true in part, but the EPO must start working and then it will be possible to judge whether this structure works or not. In his opinion, when it comes to the central office, the solutions are correct. Dr Ceccarelli pointed out that it is a great advantage of EPO to have one central office in Luxembourg. On the other hand, the structure in the field may pose a greater problem

## ROUND TABLE

### THE EPPO, NEW ACTOR ON THE SCENE: OPERATIONAL CHALLENGES AND THE COORDINATION WITH THE EU AGENCIES AND THE NATIONAL AUTHORITIES



He stressed that it was a very important task to establish methods of cooperation with national prosecutors. It is not easy, if only due to the complexity of the legal issues of such cooperation. For example it is still unknown how crimes described as being "inextricably linked" to offences detrimental to the European Union's financial interests will be interpreted at the national level or by the Court of Justice.

Dr Ceccarelli concluded his presentation with the message that he was aware of the many expectations of the EPO but the EPO was ready to act and hoped to meet them.

**DANILO  
CECCARELLI**



# ROUND TABLE

## WHY DID POLAND NOT JOINED THE EPPO?



Prof. Serowaniec started the presentation and described how initially in 2013 Poland presented an open attitude towards the establishment of the European Public Prosecutor's Office. Then he pointed out that the government indicated that Poland is among the Member States with the highest annual number of cases involving offences against the EU's financial interests, which testifies to the considerable involvement of the Polish authorities in combating this type of crime. Therefore, it was in Poland's interest to join the initiative, which would create a coherent and more effective system of prosecuting crimes against EU financial interests. The government also emphasized the importance of cooperation of Poland with the European Commission in the area of utilization of EU funds, pointing out that Poland was one of the largest beneficiaries of EU funds, and in the years 2014-2020 even higher allocation of EU funds under the cohesion policy is assumed.

The negotiating margin presented by the government with regard to the draft regulation on the establishment of the European Public Prosecutor's Office was reflected in the opinions of the Sejm Committee for European Union Affairs and the Senate Committee for European Union Affairs. The latter, supporting the proposal to establish a European Public Prosecutor's Office as the body charged with investigating offences detrimental to the European Union's financial interests, argued against conferring on the European Public Prosecutor's Office "absolute exclusive competence".

## MACIEJ SEROWANIEK

*Prof. of Constitutional Law,  
Torun University*

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## NATALIA DĄSKO

*Dr. of Criminal Law,  
Torun University*

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Furthermore, it disagreed with granting the European Public Prosecutor's Office exclusive jurisdiction when an offence against the Union's financial interests is inextricably linked to another offence outside this scope. The second important issue highlighted by the Senate committee was the structure of the European Public Prosecutor's Office. The committee opted for a more collegial character of the European Public Prosecutor's Office. On the other hand, the Senate Committee supported the proposed draft model for the European Public Prosecutor's Office based on delegated prosecutors who simultaneously have prosecutorial powers in the respective Member State.

## ROUND TABLE

### WHY DID POLAND NOT JOINED THE EPPO?



Prof. Serowaniec explained that unlike in the case of previous governments, the current government is guided by a conviction about the primacy of domestic policy over foreign policy. The Government's position is somewhat changed from that which was previously presented, whether originally in 2013 or before the EU Justice Councils. To put it simply, it contains now too many solutions that are unfavourable to Poland, that threaten the independence of Polish national bodies for fighting crime against EU financial interests, which would be dealt with by the European Public Prosecutor's Office.

The government believes that the issue of protecting the sovereignty of the Polish state is of key importance when assessing the legitimacy of this project, as it involves the creation of a supranational institution and massive interference in the systems of national legal systems.

Dr Daško discussed in more detail the most important arguments for Poland in assessing the advisability of Poland joining the EPO in the field of criminal law. It was mainly about prosecution of VAT crimes and crimes described as being "inextricably linked" to offences detrimental to the European Union's financial interests.

**MACIEJ  
SEROWANIEK**

**NATALIA  
DÀSKO**