Deliverable 6

Final Recommendations

Professors Aldo Sandulli, Maurizio Bellacosa, Alexander De Becker, Maurizia De Bellis, Hilde Caroli Casavola, Cristina Fasone, Marta Simoncini, and Maciej Serowaniec. Doctors Emanuele Birritteri, Valerio Bontempi, Eva Kiel (formelry Rulands), Alessandro Nato, Rossella Sabia and Elisabetta Tati

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 merely reflects 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

BETKOSOL
Better Knowledge for Better Solutions

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

Final Recommendations

Work Package 4 - Deliverable 6

Due date: 30.6.2022
Submission date: 27.06.2022
Lead beneficiary: LUISS University
Authors: Professors Aldo Sandulli, Maurizio Bellacosa, Alexander De Becker, Maurizia De Bellis, Hilde Caroli Casavola, Cristina Fasone, Marta Simoncini, and Maciej Serowaniec. Doctors Emanuele Birritteri, Valerio Bontempi, Eva Kiel (formelry Rulands), Alessandro Nato, Rossella Sabia and Elisabetta Tatì

Table of contents

Introduction 6

Acknowledgements 7

Recommendations: attribution of authorship 8

Part I 9

Recommendations for the EU case 9

Section I. General principles and the protection of the EU financial interest 10

Section II. The criminal law perspective: institutional coordination to promote the protection of the EU's financial interests: OLAF and EPPO 15

Section III. Covid-19 emergency funds and the protection of the EU's financial interests 17

Section IV. The Recovery Fund and the protection of the EU's financial interests 22

Part II 27

Recommendations for the Italian case 27

2.1 The state of the art: controls, simplification, digitalisation and the National Recovery and Resilience Plan 28

2.2 Risk evaluation: general trends concerning the protection of the EU's financial interests 31

2.3 Recommendations concerning external controls and institutional coordination 32

2.4 Recommendations concerning digital coordination and data-interoperability 37

2.5 Recommendations concerning ordinary internal and first level controls for managing EU funds: institutional coordination, administrative capacity, and the specific situation of the local sector, especially in the light of the NRRP 45

2.6 Recommendations concerning communication and transparency issues for the implementation of the NRRP 53

2.7 Criminal law recommendations 54

Part III 57

Recommendations for the Polish case 57

3.1. Institutional coordination and local involvement to favour the proper use of EU funds 58

3.2. Effective mechanisms for cooperation between national audit institutions 60

3.3 The legal nature of the guidelines concerning the operational programmes financed using EU funds 63

3.4. Poland's commitment to the work of the European Public Prosecutor's Office 64

Part IV 67

Recommendations for the Belgian case 67

4.1 Restrictive reporting practice in fraud-related matters 68

4.2. The relationship between the Belgian legal system and the EPPO: how to relocate an EPPO case from one Member State to another? 69

4.3. The relationship between the Belgian legal system and the EPPO: how to close an EPPO investigation in Belgium? 71

4.4. Overlapping between control levels: are cross-counting approaches the solution? 74

Part V 77

Recommendations for the German case 77

5.1 The prevention and prosecution of criminal offences – expanding forensic IT personnel, expertise, and competence at the State Criminal Investigation Offices 78

5.2. Access to information on aid granted – the obligation to establish a national *de minimis* central register 80

5.3. Shared management of funds – broadening the scope for action and implementing a national risk assessment strategy 82

5.4 Advancing the quest for simplification and making cooperation meaningful 84

References 86

Introduction

The recommendations are organised into five parts. One for the European level and four for each country: Belgium, Germany, Italy and Poland. The recommendations for each part have their own numbering. Mostly, each recommendation (or group of recommendations) is preceded by a "state of the art" (based on the Working Package (WP) 1 and 2) and a "risk-oriented" section (based on the WP3). Apart from these shared elements, each part may be divided into sections, chapters, and paragraphs.

The recommendations have been conceived as operative and policy indications. They are based on the literature available in Deliverable (D) 1 and D2, except for some novelties and the decision of the authors to make specific references. The complete list of these references, bar indications of the online location in the text, is available at the end of the document.

As regards the Italian case, particular attention has been devoted to policy implications and recommendations concerning the national recovery and resilience plans (NRRP), especially from the administrative point of view, as Italy is the major recipient of the European funds made available through the Recovery and Resilience Facility (RRF), so it has been necessary to carry out a specific study in this area. At the time of WP1 and WP2, little information was available regarding how the national recovery and resilience plan were to be implemented other than the initial introduction of the governance model. For this reason, general "state of the art" and "risk-oriented" paragraphs have been included at the beginning of the Italian part in this deliverable.

The recommendations relate to different areas:

- Policy implications and recommendations following an analysis of the promotion of **institutional coordination** in particular, in an effort to **simplify the system**;
- Policy implications and recommendations following an analysis of the **coordination** between **prevention** (administrative) and **prosecution** (administrative-criminal), especially when the funds at stake are subject to time constraints and it is imperative to establish as soon as possible all the necessary controls from the initial to the final stages;
- Policy implications and recommendations following an analysis of the **need to coordinate general-purpose and sectorial institutions** deputed to exercise control through regulation (institutional coordination through functional coordination);
- Policy implications and recommendations following an analysis of technological **innovation and data interoperability**.
- Policy implications and recommendations following an analysis of **general principles** and the protection of EU financial interests **(transparency, participation, good administration, etc.)**.

Arguments in this connection can be found in the Policy Brief available on the BETKOSOL website (D7).

Acknowledgements

The scientific coordinators of the D6 deliverable project were Professors Aldo Sandulli, Maurizio Bellacosa, Alexander De Becker, Maurizia De Bellis, Cristina Fasone, Hilde Caroli Casavola, Marta Simoncini, and Maciej Serowaniec. They have also acted as supervisors of the parts written by junior researchers. Furthermore, each Member State engaged the collaboration of various researchers and academic experts. The work on the Italian case was prepared with the collaboration of Doctors Valerio Bontempi and Elisabetta Tatì, for the administrative law perspective, and Doctors Emanuele Birritteri and Rossella Sabia, for the criminal law aspects, respectively under the supervision of Profs Marta Simoncini and Maurizio Bellacosa. The Polish case is the work of Prof. Maciej Serowaniec alone. The German case is based on the work of Dr Eva Kiel – formerly Rulands – from the criminal and administrative law perspectives, and Prof. Hilde Caroli Casavola (administrative law and supervision), while the Belgian Case is based on research by Doctors Alessandro Nato and Eva Kiel for both criminal and administrative law recommendations under the supervision of Prof. Alexander De Becker.

Regarding the European part, the recommendations have been drafted thanks to the collaboration of experts in European law, comparative law, administrative law, and criminal law and have been jointly written by Professors Marta Simoncini, Cristina Fasone, and Maurizio Bellacosa, with Doctors Emanuele Birritteri, Alessandro Nato, Rossella Sabia, and Elisabetta Tatì.

The research team also wish to thank the reviewers – Professors Francesco Bilancia, Elisa D'Alterio, Antonino Gullo, Daniel Jurewicz, Nicola Lupo, Giovanni Piccirilli – for their invaluable suggestions on how to improve deliverable D6.

Lastly, the team thanks Prof. Adrian Bedford for the linguistic review of the entire paper.

Recommendations: attribution of authorship

European Part

A) to B) Prof. Marta Simoncini
C) to D) Prof. Cristina Fasone
E) to F) Prof. Maurizio Bellacosa, Dr. Emanuele Birritteri and Dr. Rossella Sabia
G) to L) Dr. Alessandro Nato
M) to O) Dr. Elisabetta Tatì

Italian Part

A) to S) Prof. Marta Simoncini, Dr. Valerio Bontempi and Dr. Elisabetta Tatì
T) to U) Prof. Maurizio Bellacosa, Dr. Emanuele Birritteri and Dr. Rossella Sabia

Polish Part

A) to G) Prof. Maciej Serowaniec

Belgian Part

A) to C) Dr. Eva Kiel (formerly Rulands)
D) to F) Dr. Alessandro Nato

German Part

A) to G) Dr. Eva Kiel (formerly Rulands)
H) Prof. Hilde Caroli Casavola

Part I

Recommendations for the EU case

Part I

Recommendations for EU level

Section I. General principles and the protection of the EU financial interest

1.1 Transparency gaps in the budget execution discharge procedure

Prof. Marta Simoncini

1.1.1. Regulation and organisation – the state of the art

This recommendation is based on the study carried out in BETKOSOL D2 and D4. In those deliverables, we identified a specific issue of transparency and institutional cooperation in the EU budgetary discharge procedure. According to art. 319 TFEU, it is the European Parliament (EP) that leads the procedure. Supported by the annual report of the EU Court of Auditors and a recommendation from the Council of Ministers, the EP approves or rejects the budget. In this procedure, the EP can ask the Commission for further information regarding the expenses of the EU.

The Commission is responsible for implementing the EU's general budget, but each EU institution and body is individually responsible for the execution of the sections of the budget concerning their expenditures and revenues (art. 59, Financial Regulation).

The EP's decision on discharge expresses both a technical opinion on the accounts and a political assessment of the work of the Commission. Unlike the motion of censure (art. 234 TFEU), the Treaties envisage no specific consequences for the rejection of discharge. Only the EP Rules of procedure trigger specific follow-up action (see Annex V, PROCEDURE FOR THE CONSIDERATION AND ADOPTION OF DECISIONS ON THE GRANTING OF DISCHARGE). On one occasion, the EP refused to grant a discharge for political reasons rather than on strictly budgetary grounds. In 1998, by postponing the decision on the discharge of the 1996 budget, the EP indirectly contributed to the resignation of the whole Commission, hit by a scandal over the mismanagement of EU resources and expenditures by some of the Commissioners.

Through exercising its leading role in the discharge procedure, the EP has made it an instrument of accountability for all other EU institutions, agencies and bodies apart from the ECB, which has a separate budget.

1.1.2. Risk evaluation

The political-administrative relevance of the discharge procedure requires a high level of cooperation among the institutions as well as accurate information sharing.

The EP examines the following documents (art. 1, Annex V, EP Rules of Procedure):

(a) the revenue and expenditure account as well as the financial analysis and balance sheet forwarded by the Commission.

(b) the Annual Report and special reports of the Court of Auditors, accompanied by the Institutions' answers.

(c) the statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors pursuant to Article 287 of the Treaty on the Functioning of the European Union.

(d) the Council Recommendation on discharge.

The competent EP committee drafts a report with a proposal on the discharge. The EP also has the right to request (and receive from) the Commission further evidence concerning expenditures and how they were checked.

On the basis of the Committee's report, the plenary session of the EP may either approve the discharge by majority voting, including an assessment of the Commission's budgetary management over the financial year and observations relating to the implementation of expenditure for the future. Otherwise, it may postpone the discharge decision, giving reasons and specifying further action that the Commission is expected to take, together with the deadlines for doing so. It would also set out the documents required so that Parliament can reach an informed decision (art. 3, Annex V, EP Rule of Procedure).

If discharge is postponed, the EP takes a second vote concerning discharge of the budget. Regardless of whether the EP approves or disapproves it, the discharge procedure is closed. Should the EP reject discharge of the budget, the Commission is required to make a statement at the next plenary session of Parliament.

There are two weak points in the procedure. The first is that the EP has to analyse and evaluate an enormous volume of documents produced by other institutions. This means that to perform its discharge function correctly, the EP must receive accurate information. The second issue is that the other EU institutions need to cooperate actively in the procedure by providing further information and explanations about expenditure. The Commission is the main institution that needs to cooperate effectively with the EP. However, considering that each institution, agency, and body is individually responsible for its own expenditures, all of them are indirectly involved in the procedure and the exchange of information.

This has not always happened as it should. The Commission and the European Council have been particularly reluctant to accept the oversight of the EP in the implementation of their budget. Since 2009, the EP has not discharged their budgets, missing important information and having no real dialogue with these institutions during the discharge procedure.

Evidence of this clearly emerged in the decision on the 2018 budget. In the Second Report (2019/2057(DEC)), the EP Committee on Budgetary Control stressed that "for ten consecutive years the Council has refused to cooperate in the discharge procedure and thus forced the Parliament to refuse to grant discharge" (C.1) and "regrets that Parliament repeatedly encounters difficulties in receiving answers from the Council due to a lack of cooperation, resulting in the refusal to grant discharge for more than 10 years" (C.6).

Based on a restrictive interpretation of art. 319 TFEU, which only mentions the Commission as the subject of this procedure, the Council does not recognise Parliament's authority to carry out the discharge procedure against it. In the 2018 Report, the EP pointed out that "pursuant to the Treaty on the Functioning of the European Union (TFEU) and the Financial Regulation, Parliament is the only discharge authority in the Union, although the Council's role as an institution giving recommendations on the discharge procedure must be fully acknowledged; in this regard, it asks the Council to give discharge recommendations with respect to the other Union institutions" (C.4).

The EP also emphasises that "this state of affairs is not tenable for either institution: for the Council because no positive decision on the implementation of its budget has been granted since 2009, and for Parliament because it shows a lack of respect for Parliament's role as discharge authority and guarantor of the transparency and democratic accountability of the budget of the Union" (C.2). According to the Report, this affects "the public trust in the financial management of the Union institutions; the Report considers a continuation of the current situation as detrimental to the accountability of the Union and its institutions" (C.3).

This information gap feeds distrust among institutions, produces delays, and affects the efficiency of the procedure. In addition, the absence of clear legal consequences for when discharge is rejected reduces the possibility of controlling budgetary expenditure. Overall, the dysfunctions in the inter-institutional dialogue risk downsizing the accountability of the EU budget.

1.1.3. Recommendations

A) To address inaccurate information sharing and the lack of inter-institutional cooperation in the EU budgetary discharge procedure, openness and transparency should be fostered through the publication of information on budget expenditures in inter-operable databases.

Access to information is essential for the smooth functioning of the discharge procedure. Setting up inter-operable databases between the institutions, agencies, and bodies would have beneficial effects on the procedure. This would also favour the public oversight of EU budgetary spending. More specifically:

1) interoperability would make the exchange of data and information among the EU institutions less burdensome and more efficient. By sharing information, the exchange of good practices would also be facilitated, especially in relation to human resources, building management, IT services, and security.

2) The use of inter-operable databases would also increase digitalisation in terms of internal operations and management procedures and would contribute to reducing the digital gap between institutions, agencies, and EU bodies.

For instance, in the Report on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2019 (2020/2167(DEC)), the Committee on Budgetary Control explicitly required more proactive engagement with the digitalisation of the Agency's performance (para. 15).

Given the significant overall expected increase in the Agency's budget over the coming years and its greater responsibilities, the EP Committee called on the Agency to provide more detailed information on implementing its budget on operational activities per chapter, precisely listing the activities financed under the articles and items (para. 19).

The EP resolution of 21 October 2021, with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2019 (2020/2167(DEC)) welcomed the Agency's efforts to create a register of all the documents the Agency produces, reflecting its transformation and digitalisation as well as its proactive publication of key documents on its website, making them available through the Public Access to Documents Registry (para. 5).

3) Database-stored information would inherently expose each institution, agency, or body to public oversight and control.

The adoption of openness and transparency policy through digital technology would entail setting up all the necessary security measures to avoid any risk to the online security of the information processed.

4) Digitalisation (i.e., e-submission tools and e-invoicing) may work as an incentive for the reduction of fraud and the mismanagement of resources.

B) To address the lack of inter-institutional cooperation in the EU budgetary discharge procedure, it is necessary to adopt a MoU between Parliament, the Council, and the Commission on cooperation between Parliament and the Council during the annual discharge procedure

In the Resolution (EU) 2021/1547 concerning the decision on discharge for the financial year 2019 with regard to the European Council and the Council, the EP reiterated the need to improve cooperation and proposed the adoption of a memorandum of understanding MoU (para. 59).

The EP "stresses that the current situation, where Parliament can only check the reports of the Court and of the European Ombudsman as well as the information on the Council's website but does not receive written or oral answers from the Council during the annual discharge procedure, makes it impossible for Parliament to make an informed decision on granting discharge, and that this has a lasting negative effect on both institutions and discredits the procedure for political scrutiny of budget management" (para. 62).

The MoU should also clarify the different roles that the EP and the Council play in the discharge procedure, as the EP "does not accept that they have an equivalent and reciprocal role" (para. 66) and "reiterates its requests to the Council to give discharge recommendations with respect to the other Union institutions" (para. 67). As the pandemic slowed negotiations (paras 68-69), it would be good to restart the process and reach an agreement, which would clarify the responsibilities of the institutions and the principles of their cooperation.

1.2 Next Generation EU (NGEU) and the problem of the democratic accountability gap

Prof. Cristina Fasone

1.2.1. Regulation and organisation – the state of the art

The NGEU has temporarily doubled the size of the EU budget for the next five years. Alongside the increased flow of money from the EU to the Member States, to a large extent produced through a common European debt, there should also come more evident responsibilities in the activities performed by the EU and national institutions, as well as vis-à-vis the general public. Indeed, European citizens are expected to be the main target beneficiary of this massive recovery plan.

NGEU governance revolves around various legal instruments. The most significant of these are the Regulation on European Union Recovery Instruments, which enables the Commission to sell bonds on the financial markets to collect resources up to 750 billion euro (in 2018 prices), and the Regulation of the Recovery and Resilience Facility, which defines the rules for Fund management, as well as the conditions for disbursement and repayment.

Neither the European Parliament nor the national parliaments have been involved in adoption of the Regulation on the European Union Recovery Instrument under art. 122 TFEU.

By contrast, the Regulation on the Recovery and Resilience Facility (RRF), approved under the same legal bases used for the structural funds, art. 175(3) TFEU has been significantly amended by the EP through ordinary legislative procedure and has seen the participation of national parliaments though the so-called "political dialogue" procedure (Protocol 1, annexed to the Lisbon Treaty), which enables domestic legislatures to bring their opinions on any aspect of a proposed law (legal basis, merits, proportionality, etc.) before the European Commission, which then provides an ad hoc follow-up on an individual basis. For obvious (political) reasons, no parliament decided to activate the early warning mechanism (Protocol 2, annexed to the Treaty of Lisbon), challenging the proposal before the Commission for violation of the principle of subsidiarity.

During the legislative procedure, the European Parliament fought to increase the transparency of RFF management by imposing important information duties on the Commission, being involved in the event of suspension or delay in disbursement of the funds, and in establishing an "RFF dialogue" with the Commission and the Member States. At the same time, however, the EP is devoid of any decision-making power over RFF governance. All the decisions on disbursement are taken through the Council's implementing acts, despite the (failed) attempt of the EP to have them taken by means of delegated acts.

1.2.2. Risk evaluations

The exclusion of the EP is problematic insofar as it ignores the Parliament's status as a budgetary authority on an equal footing with the Council (art. 14 TEU). The fact that the RFF is a fund outside the EU budget, albeit subject to the Financial Regulation, cannot justify such marginalisation of the Parliament in the light of the principle of democratic accountability. Nor can the exclusion be solely grounded in the fact that the EP is excluded from the management and execution of the budget under art. 317 TFEU.

By the same token, national parliaments can control governance of the RRF through the information provided by their own executives. Nevertheless, when the RFF Regulation was adopted,

some national parliaments expressed their concerns about various points of the draft legislative act to the Commission through the previously mentioned "political dialogue". For example, the Czech Senate suggested extending the period of disbursement of the RFF from 5 to 7 years and changing the rules for the allocation of funds among Member States, replacing the national unemployment rate before the pandemic as a standard with the drop of the GDP from 2020. Similarly, the Portuguese Parliament complained about the lack of any clear assurance on the sustainability of the repayment of the EU debt in the Regulation or in the other instruments of the NGEU package and supported the need to better link the functioning of the RFF to the European Semester under art. 10 of the Regulation, which connects potential suspensions in the disbursement of the RRF to the violation of the rules of the European Semester. These concerns expressed by the Portuguese Parliament make perfect sense as, in theory, economic and fiscal policies still fall within the competence of the Member States, while the EU is responsible for coordination. However, national parliaments have no say in the governance of the RFF vis-à-vis EU institutions. Furthermore, in most Member States, the NRRPs were adopted by Governments with almost no parliamentary scrutiny, although the plans identify the policy priorities for the next five years – targets and milestones – which may be amended, albeit with an extremely cumbersome procedure.

Despite the limits just highlighted, governance of the NGEU, and the RRF in particular, reveals remarkable potential to enhance the democratic scrutiny of procedures that are partly supranational and in part national: for example, in terms of involving the "competent" Parliament, depending on the case, beyond their own level of government, in an attempt to re-connect representative democracy at European and domestic level with budgetary processes, beyond the executive dominance.

1.2.3. Recommendations

C) A more prominent role for the European Parliament

To counter the distancing of one of the two budgetary authorities – notably the European Parliament – from the governance of the RFF, the EU should move away from the idea of procedures purely dominated by executive bodies (the Commission, national governments, the Council, and the European Council in the event of a stalemate). It is a paradox that precisely when the EU has moved in the direction of creating its own resources, such as the common debt, the supranational institution par excellence is excluded from its implementation. The body representing European citizens should be given the possibility to control:

1) the management of the RFF and all other NGEU expenditure through the discharge procedure;

2) the relevant Regulation, which should be amended to ensure that the decisions on the disbursement of the funds in favour of Member States, taking stock of the achievement of or convergence towards the milestones, are taken through delegated acts, as advocated by the EP since the beginnings, rather than by means of implementing acts;

3) The EP should be enabled to participate in the RRF scoreboard revision process;

4) RRF dialogue should be enhanced so as to envisage follow-up measures if the Commission does not abide by the political directions set by Parliament, also providing due reasons for the divergence. Similar provisions could also apply to the economic dialogue between the EP and the Commission if the EP delivers recommendations on the lack of compliance with the European Semester's rules triggering the suspension of RRF disbursement to a country.

D) Improvement and fine-tuning of domestic parliamentary procedures with the supranational decision-making cycles

1) On the supranational level, taking advantage of the EP's rules of procedure, which allow national MPs to participate in the EP's committee meetings and discussion (without voting rights),

MPs from the competent committees of the domestic legislatures should be given the chance to be involved in the RRF dialogue with the Commission through the EP.

2) At the same time, by using the established procedure for "political dialogue" with the Commission, the information flow on the management of the RFF that reaches the European Parliament, and the Council should also include national legislators, except in the event of classified information.

3) Similarly, to what happens with "banking dialogue" within the context of the Banking Union, national parliaments should have the power to invite representatives of the Commission and the Council to appear for hearings before the competent parliamentary committees to explain the state of the art regarding implementation of the RFF.

Section II. The criminal law perspective: institutional coordination to promote the protection of the EU's financial interests: OLAF and EPPO

Prof. Maurizio Bellacosa, Dr Emanuele Birritteri and Dr Rossella Sabia

1.3. Regulation and organisation: the state of the art

The recommendations outlined in this section are based on an analysis of institutional coordination and the relationship between OLAF and the EPPO carried out in BETKOSOL deliverables D1, D2, and D4.

As has already been seen, protecting the Community budget from fraud became a pressing issue in the 1980s. Europe has traditionally relied on the harmonisation of criminal law provisions of the Member States, with provisions relating to fraud and other offences affecting the EU's financial interests: it may be said that this strategy remained the same from the PIF Convention of 1995 up to Directive (EU) 1371/2017 (on this point, see D1, Task 2).

As for controls and enforcement action, for twenty years the European Anti-Fraud Office (OLAF) – established in 1999, in response to dissatisfaction with the action of the Task Force for the Coordination of Anti-Fraud Policies (UCLAF), which had been set up a decade previously to bring control activities to the supranational level – has been the main anti-fraud controller at the EU level. It is essentially endowed with the power to conduct administrative investigations.

Despite the importance of its activities, OLAF's success rate in recovering unlawfully used financial resources has long been unsatisfactory: between 2009 and 2016, OLAF investigations led to prosecution in less than half the cases and resulted in recovery of less than a third of funds (see D2 for insights on this issue).

This situation was one of the main reasons behind the 2017 decision to set up the European Public Prosecutor's Office (the EPPO, initially meant to become operational by the end of 2020 but postponed to June 1, 2021). In this context, OLAF itself was reformed in 2020 to allow greater coordination with the newly established EPPO and to enhance the effectiveness of its own investigations (as discussed in D2).

The model for the EPPO, adopted with Regulation 2017/1939, consists of a central 'head' and 'arms' in the form of European delegated prosecutors in the Member States. The efficiency of the EPPO will therefore depend on the proper functioning of the national judicial systems and a clear division of competences with the national prosecutors.

In the light of the above, as outlined in the previous steps of this research, establishing the EPPO may give rise to several issues and future challenges, including coordination of the work and roles of OLAF and the EPPO (see next section), the EPPO's cooperation with non-participating Member States, and the need to find an adequate balance between prosecution and defence, since the defendant's rights depend on the laws of the State with jurisdiction over the case, the admission of evidence (also discussed in the next section), and assessment of the appropriate EPPO data protection regime.

1.3.1. Risk evaluation

As illustrated in the previous BETKOSOL project deliverables – and especially in the context of the research – one of the main problems regarding EPPO enforcement is cooperation with national authorities. It should be borne in mind that there is no centralised European Criminal Court, nor is there a centralised European level investigative judicial police force reporting directly to the EPPO. Therefore, the EPPO must necessarily rely on the individual national authorities.

However, each national authority usually has its own criminal procedural law system, as well as its own rules (which may differ significantly from those of other Member States) with regard to, *inter alia*, the role of the public prosecutor in criminal proceedings, the degree of police independence during investigations, gathering evidence, interim measures, the admission of evidence at trial in cross-border cases when evidence is obtained in another Member State or in accordance with the law of another Member State, the lack, among Member States, of common criminal law provisions defining the EPPO's scope of action, namely the PIF crimes.

For instance, it should be noted that many legal systems are not familiar with a "prosecutor model" such as the EPPO, i.e., a prosecutor with a very prominent role in the direct coordination of investigations. As previously highlighted (see D2 for a comprehensive overview), in this regard it is also necessary to take the following issues into account: a) the fact that the independence of the EPPO could be compromised in several continental systems – such as Belgium, France, and the Netherlands – where there is a hierarchical relationship between the public prosecutor and the executive; b) the circumstance that the pretrial phase in criminal proceedings is regulated in different ways across Europe (in France, for instance, the *juge d'instruction* conducts the preliminary investigation for serious crimes, thus assuming the dual nature of investigator and judge).

This situation could pose several concrete and practical problems in cooperation between the EPPO and national prosecutors.

Moreover, the absence of shared rules in criminal procedural law may entail for example that the European prosecutor's decision regarding the place in which seizure of the proceeds of crime takes place may be influenced by the (higher or lower) degree of flexibility of the procedural rules for the application of such a measure.

On the other hand, the possibility that the EPPO may extend its competence to other offences (in particular to those "inextricably linked" – see art. 22(3), Council Regulation (EU) 2017/1939 – to crimes affecting the EU's financial interests) may also lead to conflicts of competence between the EPPO and national authorities. This is especially possible in relation to jurisdictions with complex criminal enforcement systems, and those with highly specialised prosecutors leading investigations in specific areas of crime (e.g., local specialist Anti-Mafia prosecutors as in the Italian case).

Consideration must be also given to how OLAF and the EPPO should operate when conduct that can fall within the mandate of both institutions emerges. Hence, one of the most relevant issues concerning cooperation between the EPPO and OLAF, the latter being an administrative authority, could consist of testing OLAF's ability – in cases where the EPPO asks for its support – to work with prosecutors with different approaches to – and objectives in – carrying out investigations.

If a policy whereby OLAF and the EPPO are to be two autonomous bodies is adopted – with the national authorities providing the main operative support for the EPPO, and the relationship between OLAF and the EPPO being one of co-operation rather than hierarchy – open issues concerning OLAF will need to be addressed, such as the fact that despite the 2020 reform, private parties still enjoy fewer protections in administrative investigations than in criminal ones.

1.3.2. Recommendations

E) ***Assessing the suitability of outlining a common framework of criminal procedural law regarding EPPO enforcement***

To prevent conflicts of competence and practical problems that may occur in cooperation between the EPPO and national authorities, it may be appropriate to assess the risks and benefits of establishing a common framework of criminal procedure applicable to EPPO enforcement.

Any such harmonisation would need to consider and explore, *inter alia*, the possibility of establishing common rules for criminal investigations and proceedings, especially evidence collection and interim measures (such as seizures). Other possibilities include setting up specialised investigative police bodies reporting directly to the EPPO (located at local or central level) and establishing a central criminal court for such proceedings at the European level.

F) ***Further cooperation between OLAF and the EPPO is required***

Cooperation between OLAF and the EPPO is essential to ensure robust protection of the EU's financial interests. Therefore, also by applying specific cooperation and training strategies, OLAF's ability to liaise and work closely with criminal justice bodies needs to be strengthened. It is also necessary to assess whether it may be appropriate to increase the protection of the individual in administrative proceedings potentially affected by cooperation between the EPPO and OLAF.

Section III. Covid-19 emergency funds and the protection of the EU's financial interests

Dr Alessandro Nato

1.4. Coordination regarding control of emergency funds: RescEU, SURE, and strategic investments supporting small and medium enterprises (EIB)

This recommendation is based on the study carried out for BETKOSOL D1, D2, and D4 of the three case studies: RescEU, SURE, and strategic investments supporting small and medium enterprises (EIB). These case studies were chosen because they represent three relevant actions that the EU has created to respond to the first phase of the Covid-19 emergency in the sectors of health, work, and economic support for businesses.

1.4.1. Regulation and organisation – the state of the art

RescEU, SURE, and strategic investments supporting small and medium enterprises (EIB) were chosen as case studies in BETKOSOL D1, D2 and D4 because they represent three important actions that the EU created to respond to the first phase of the Covid-19 emergency in the sectors of health, work, and economic support for businesses.

The covid crisis gave the European Commission the opportunity to establish a series of initiatives to support Member States in acquiring the necessary amounts of medicines and forms of protection at affordable prices. Furthermore, on 19 March 2020, the European Commission announced the compilation of a strategic stockpile of medical equipment, and Decision EU 2020/414 created a strategic RescEU stockpile of medical equipment.

Moreover, Decision EU 2020/414 changed several rules to allow for a more flexible allocation of resources. Although the percentage of funds to be allocated to prevention, preparation and response to disasters respectively was fixed, there is a margin of flexibility which allows the Commission to

reallocate funds in an emergency. This approach will therefore allow the EU to respond better to the unpredictable nature of disasters and use the funds where they are most needed.

According to Decision EU 2020/414, the Commission finances 100% of RescEU capacity, including procurement, maintenance, and delivery costs hosted by several Member States and constantly replenished. Indeed, the RescEU reserve of medical equipment is wholly financed by the EU budget. The first investment authorised by the European institutions to strengthen the RescEU stock was 50 million euros in March 2020 (see here). However, RescEU's budget remains smaller than that of other programmes. For example, the 2021 EU budget allocates to RescUE 11,506.527,000 euros of commitments and 9 835,078,549 euros of payment.

In this context, to ensure an effective disaster response, the Commission and the Member States must guarantee, where appropriate, adequate geographical distribution of RescEU resources. The resources are therefore spread across the various Member States and in different geographical areas. Germany and Romania were the first Member States to host the RescEU medical stockpile, followed by Denmark, Greece, Hungary, and Sweden in September. In January 2021, Belgium, the Netherlands, and Slovenia became new host Member States for RescEU medical supplies, and Germany hosted a second medical supply. From these countries, medical products are then sent to Member States in need. For example, deliveries of purchased stocks of RescEU medical equipment began on 2 May 2020, and 330,000 protective masks were delivered to Italy, Spain, and Croatia, and more batches of protective masks were delivered to Lithuania (20,000), North Macedonia (10,000), and Montenegro (10,000) under the EU Civil Protection Mechanism. Furthermore, on 7 May 2020, the European Commission delivered 1.5 million masks to seventeen Member States and the UK to protect EU healthcare workers. This is the first batch of 10 million masks purchased by the Commission via the Emergency Support Instrument. They were delivered over the following six weeks in weekly instalments of 1.5 million masks to the Member States and regions in need (see here).

The pandemic has had a major negative impact on employment, and the Member States and the European Commission have sought to contain the impact of the crisis on employment, especially in the hardest-hit sectors (D'Ambrosio, 2020, 115). Indeed, the confinement measures and massive decline in liquidity available to companies have resulted in a forced reduction in working hours in many economic sectors, and this leads to an increase in national welfare-system spending in short-term subsidies to support work (Giupponi, Landais, 2020). For these reasons, the European Commission proposed that the Council create a new supranational instrument of temporary support to reduce the dangers arising from the loss of income and employment in the EU. Taking up this proposal, the Council adopted Regulation 2020/672/EU, establishing a European Temporary Support Instrument to mitigate the risks of unemployment in a state of emergency (hereafter: SURE). SURE helps the EU Member States to distribute part of the financial risk associated with crises and caused by a decline in aggregate demand. However, SURE is a complex mechanism. Member States may access the SURE funds even if they foresee an increase in spending following the establishment of ad hoc social measures to preserve employment during the health crisis (See art. 3(2) Regulation 2020/672). The beneficiary Member States must make use of financial assistance primarily in support of their national schemes to reduce working hours or similar measures and, where applicable, in support of the relevant health measures. In other words, SURE will serve as a second line of defence to finance working-time reduction schemes and similar measures, helping the Member States to safeguard jobs and protect employed and self-employed workers from the risk of unemployment and loss of income (Andor, 2020, 141; Petzold, 2020, 161).

There is a rapid procedure for disbursing the resources made available by SURE to the Member States. After receiving a request from a Member State, the European Commission verifies the public expenditure increase related to the short-time scheme or similar measures (See art. 11(4) Regulation 2020/672). Subsequently, the Council decision will establish the amount of the subscription, the maximum average maturity, the price formula, the maximum number of instalments, the period of availability, and the other detailed rules necessary for granting financial assistance (See art. 11(4) Regulation 2020/672). After receiving the funds, the Member States can finance short-term schemes for workers. Moreover, the beneficiary Member State must regularly check that the SURE funds have been used in compliance with the agreement. To this end, the Member State is required to

take appropriate measures to prevent irregularities and fraud and, if necessary, the national authorities must take legal action to recover any misappropriated funds. To ensure protection of the financial interests of the Union, this regulation authorises the Commission, OLAF, and the Court of Auditors to exercise their rights, namely, to carry out investigations, including on-the-spot checks and controls. If the findings of these verification procedures indicate that the beneficiary country has been involved in acts of fraud or corruption, or other illegal activities affecting the financial interests of the Union, the European institutions have the right to request early repayment of the loan.

Until February 2021, the Commission offered financial support amounting to 90.6 billion euros to nineteen Member States, of which 90.3 billion euros have already been approved by the Council in favour of eighteen Member States. SURE can still make more than 9 billion euros in financial assistance available, and Member States can still submit requests for support. In response to the resurgence of infections and new restrictions, the Commission may consider further requests for supplementary support from the Member States. The countries benefiting most from SURE funds are Italy, Spain, and Poland. The initial funding requested was slightly reduced to meet the concentration limit of 60 billion euros for each of the three largest beneficiaries under the regulation. The other Member States received the requested funding. Belgium, Portugal, and Romania each received between 4 and 8 billion euros, while Greece, Ireland, the Czech Republic, Slovenia, and Croatia received between 1 and 3 billion euros. The other applicant Member States – Slovakia, Lithuania, Bulgaria, Hungary, Cyprus, Malta, and Latvia – received under 1 billion euros. (See here).

During the first phase of the pandemic, the European Commission worked to support and empower Small and Medium Enterprises (hereafter: SMEs). In this period, SMEs experienced short-term consequences due to the various national lockdowns. However, the greatest impact on their functioning will be the long-term consequences if no specific policy is adopted to counteract them. Hence, during the Covid-19 outbreak, the European Commission mobilised financial support for SMEs through its COSME programme. In particular, it boosted the existing Loan Guarantee Facility (LGF) under the programme with additional resources from the European Fund for Strategic Investments so that banks could offer bridge financing for SMEs. This included long-term working capital loans (of 12 months or more), as well as credit holidays allowing delayed repayments of existing loans. The measures were made available through the European Investment Fund (EIF) by means of a call for expressions of interest for financial intermediaries open up to 30 June 2020.

In addition, support for SMEs from European institutions includes access to financing and credit through the European Fund for Strategic Investments, specifically addressing the transition to a green and sustainable economy. Hence, the EU resources under scrutiny will mainly come under two programmes: the Green Deal and InvestEU. The European Fund for Strategic Investments (EFSI), operated under the supervision of the EU Commission was the central pillar of the last “Juncker” Investment Plan for Europe. The European Investment Bank (EIB) too has a key role, especially in the so-called EIB group (the EIB and the European Investment Fund, EIF). Thanks to EFSI support, the EIB, with its subsidiary for financing small businesses, and the EIF have provided financing for hundreds of thousands of SMEs across a wide range of sectors and in all EU countries (examples range from sustainable agriculture in Belgium, to innovative medical technology in Spain, to an energy efficiency company in Lithuania; see here).

1.4.2. Risk evaluation

Risk of fraud is common to all three case studies. During the pandemic, fraud involving medical materials and personal protective equipment has been substantial across the EU. There are several examples of the countless scams in the procurement of medical equipment brought to light at the European and global levels, also considering the ‘grey zone’ sometimes created by the response to this public health emergency. As EU Chief Prosecutor Laura Kovesi already noted during the first wave of the pandemic, “the response to Covid-19 is inviting opaque practices, including the awarding of contracts without open bids, or the use of false documents to buy medical equipment or drugs at artificially inflated prices” (see here). The analysis conducted at the national level in BETKOSOL D1 shows the extent of fraudulent activity in this sector. For example, in Germany, ‘the federal minister

was accused of wasting taxpayers' money after paying over the odds for large supplies of face masks. First of all, there was an agreement with a company where the husband of the Minister of Health works. Through this deal, the Ministry of Health spent nearly €1 million on 570,000 surgical masks in April 2020. In addition, in May 2021, it emerged that the German federal government had also paid a very high price for millions of FFP2 masks from the Swiss company Emix (see here). Like other Member States, Belgium has also been subject to scams relating to the purchase and procurement of medical supplies (see here). In May 2020, an investigation coordinated by Europol enabled the issuance of search warrants in connection with an investigation into the company that supplied 15 million masks in 2020 for free distribution to the population in Belgium. Charges have been made relating to money laundering, fraud, forgery and use of fake documents since the initial investigation (see here).

Fraud was also found in connection with funds to support SMEs. For example, the massive allocation of funds for SMEs resulted in an increase in the amount of fraud in Germany. At the beginning of May 2020, the Anti-Money Laundering Unit received 2,300 suspicious reports concerning Corona-Soforthilfe – the immediate aid measures provided by the German government to support SMEs. The reports came directly from the banks. They had registered unusual deposits in some accounts because sums of aid between 9,000 and 15,000 euro had been credited to the accounts of some customers, whereas these accounts usually contained just a few hundred euro. Hence, the banks sent reports to the anti-money laundering authorities. To access Corona-Soforthilfe support, it was sufficient to fill in a simple online form, indicating fiscal details and a state of financial need. Subsequently, the applicant would find the required support on their account after a few days. The procedure saved many small businesses from immediate bankruptcy, but the ease of access to emergency credit favoured scams. It must be remembered that many funds to aid SMEs also come from the EU, but their visibility as "European funds" is not so obvious, given that they enter the system through financial intermediaries or the actions of the Member States. To this end, the EIB has its own investigative service.

The Commission reports do not uncover much fraud relating to funds granted through SURE. Indeed the Member States did not deregulate access procedures for companies and workers, which did not make access faster, but it did reduce fraud. The European Commission recalls that it is the responsibility of the beneficiary Member State to regularly check that SURE funds are used in accordance with the agreement. However, risk of fraud exists in this sector too. For example, some investigations in Belgium have shown that self-employed workers and entrepreneurs unjustly obtained the aid envisaged by the Flemish government during the first phase of the pandemic. The body responsible for Covid-19 awards in Flanders has announced that it intends to recover €63.5 million in illegally obtained awards, of which €36 million have already been returned. VLAIO actively seeks to detect abuse in connection with these awards, creating a specific fraud detection tool to classify some files as dangerous, half of which have been subjected to review.

1.4.3. Recommendations

G) Controls must always be set in place, including during the emergency stage of crises.

The analysis conducted so far shows that the funds and health materials distributed during the first phase of the pandemic were subject to fraud. The cases of fraud relating to medical equipment in the Member States demonstrate the need to maintain stringent controls even during the most acute phases of crisis. In fact, in the early stages of the emergency, the need to send aid and medical supplies quickly or to acquire them on the market contributes to facilitating opaque transactions or fraud. Furthermore, given the transnational dimension of fraud in this sector and the speed with which European funds are disbursed and the resources dislocated, it would be advisable for controls to take place at a supranational level. In this context, EPPO and OLAF must necessarily work together to carry out checks and investigations.

H) Fraud risks can be reduced by centralizing purchasing

Reducing the fragmentation of purchasing methods could help to counter financial interest-related fraud not only in the EU but also within Member States. In this regard, strengthening and encouraging the use of the Joint Procurement Agreement procedure would be a helpful tool. Indeed, the Joint Procurement Agreement allows European institutions to centralize spending and better control both who are the sellers and the quality of the products purchased.

I) The regulatory burden should be calibrated

As regards SURE and SMEs funds, this study shows that it would be appropriate to find a balance between deregulation (see the case of the SMEs) and over-regulation (see the case of SURE) in an emergency.

J) ***Find a solution to money laundering involving SMEs and European funds. The European Anti-money laundering Agency (AMLA) can help***

In this case, it is necessary to strengthen anti-money laundering measures. The analysis carried out in BETKOSOL D1 on the German case shows that there are several cases in which SMEs are involved in money laundering related to EU funds and VAT. The European Anti-money laundering Agency (AMLA) could help solve the problem. On 20 July 2021, the European Commission presented an ambitious package of legislative proposals to strengthen the EU's anti-money laundering and countering the financing of terrorism (AML/CFT) rules. At the heart of July's 2021 legislative package is the creation of a new EU authority that will transform AMLA/CFT supervision in the EU and enhance cooperation among financial intelligence units (FIUs). The central authority coordinating national authorities will ensure that the private sector correctly and consistently applies EU rules (see here). The Commission envisages that the AMLA will be established in 2023, beginning operations in 2024. AMLA has been set up to become the centrepiece of an integrated system of national AML/CFT supervisory authorities and will ensure their mutual support and cooperation. It is expected that the new authority will be able to overcome the existing deficiencies in the quality and effectiveness of AML/CFT supervision in the EU and contribute to better convergence of high supervisory standards (see here). Under the proposal, the AMLA will have the task and powers of directly supervising some of the riskiest financial institutions operating in many Member States or requiring immediate action to address imminent risks. As part of direct supervision, the AMLA will be able to carry out prudential checks and assessments of individual entities and groups, as well as developing and keeping updated a system for assessing the risks and vulnerabilities of the selected obliged entities. Furthermore, AMLA may adopt binding decisions, administrative measures, and financial penalties for directly supervised subjects. In particular, the added value of AMLA is the monitoring and coordination of national supervisors responsible for other financial entities in addition to supervisors of non-financial entities, a task that will establish indirect supervision of entities. Regarding the relationship with Financial Intelligence Units (FIUs) in the Member States, the AMLA will have several support functions, including conducting joint studies with the FIUs. It will also make IT and artificial intelligence services available to FIUs, promote expert knowledge on methods of detecting, analysing, and disseminating suspicious transactions and preparing/coordinating threat assessments. Regarding the relationship between AMLA and existing digital infrastructures, the Commission proposes that the new agency take over the management of the AML/CFT database, currently managed by the European Banking Authority. It would also manage the secure FIU communication network (FIU.net), to be hosted by Europol.

To carry out these tasks, the AMLA will have ample powers to adopt guidelines or recommendations for obliged entities, AML/CFT or FIU supervisory authorities (see here). Regarding organisation and governance, the Commission proposes that it should have two collegiate governing bodies. One will be an executive committee of five full-time independent members and the chairman of the Authority, while the other is to be a General Council composed of representatives of the

Member States. The Executive Board will be the governing body of the AMLA and will make all decisions concerning individual obliged entities or individual supervisors when the AMLA performs its direct or indirect supervisory functions. The Executive Board will also take decisions on the draft budget and other matters relating to the operations and functioning of the Authority. An Administrative Board of Review will handle appeals against the binding decisions of the AMLA addressed to obliged subjects under its direct supervision; the decisions of the Administrative Board of Review will be open to appeal before the CJEU (see here). One of the problems that will have to be solved is the coordination between AMLA and OLAF. Once in operation, AMLA should enter into an agreement with OLAF to avoid overlapping tasks and similar investigations being opened. However, good cooperation between AMLA and other EU and national decentralized agencies is envisaged by the provisions of the proposed regulation; these include the European Union Agency for Law Enforcement Cooperation (Europol), the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO), the Single Supervisory Mechanism (SSM) at the Union level, and various national authorities, including prudential supervisors of financial institutions. In order to improve supervision and law enforcement in all areas, AMLA should enable effective exchange of information among the above authorities and create synergies with these authorities where this can improve the success of combating money laundering and terrorist financing (see here).

Section IV. The Recovery Fund and the protection of the EU's financial interests

Dr Elisabetta Tatì

1.5 Improving European control over the implementation of the National Recovery Plans

This section offers recommendations to improve European control over the implementation of the National Recovery Plans. The suggestions cover, in part, the vertical coordination between Member States and EU institutions (the European Commission and OLAF). They also involve, in part, horizontal coordination between EU institutions, especially between OLAF and the EPPO.

1.5.1. Regulation and organisation: the state of the art

Due to the large amounts of EU funding that the NGEU is mobilising, the risk of irregularities and fraud is extremely high (See 2020 PIF Report, 2021, 39-40). The Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (RRF) establishes a complex assessment procedure to control the use of the funds, obliging the States to set up self-evaluation mechanisms (see also National Recommendations, especially in the case of Italy).

The role of the European Commission is pivotal – alongside the decisive role of the Council (arts. 18 and 19) – to this system, both for the adoption of the NRRP and for monitoring (in part, again, art. 19, concerning EC assessment, and art. 27, concerning reporting by the Member States in the context of the European Semester). The Member State concerned must report twice a year (once per EU semester) on the progress made in achieving the goals of its recovery and resilience plan (RRPs), including the operational arrangements. To this end, reports by the Member States must be appropriately reflected in the National Reform Programmes, which are to be used as a tool for reporting on the state of progress towards completion of the RRPs.

1.5.2. Risk evaluation

Taking the effects of the pandemic as their starting point, the EU institutions interviewed during working package 3, see a risk of new kinds of fraud in the recent emergency.

For example, this observation is indirectly proved by EC answer number 5, despite being limited to the new internal Anti-Fraud Strategy: "[...] The Action Plan considers, inter alia, Covid-related risks". Some elements regarding the increase of fraud during the pandemic in SMEs are provided by the EPPO's interview, even though "There has been no particular change in the types of fraud [...]" (EC, answer 5, BETKOSOL D4 Databook).

Nevertheless, during the pandemic, different and innovative investigative techniques were tried out in the European scenario, including market analysis or the analysis of moving capital and the starting and shutting down of companies.

Similarly, the OLAF(2) interview reports that the situation arising from the first stage of the pandemic has certainly inspired new fraud schemes in the light of the emergency, institutional remote working, and the newness of many instruments (OLAF(2), answer 5, BETKOSOL D4 Databook). Regarding the advent of the NGEU, it is interesting to highlight the answer OLAF(2) gave to question 6, according to which the protection of the NGEU's funds puts OLAF at the centre of a complex web which, however, sees national authorities on the front line in terms of control. This element stresses even more the importance of National legal systems in the protection of EU financial interests in the future.

On this point, the interviewee from the ECA expresses 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 BETKOSOL Databook).

1.5.3. Recommendations

K) Accelerating the digitisation of European Reporting, Monitoring, and Audit, especially for the implementation of the RRF

On February 2021, a Joint Declaration by the European Parliament and the Commission on data collection for effective controls and audits was adopted (2021/C 58 I/02). These institutions recall the need to ensure effective controls and audits for the purposes of avoiding double funding and preventing, detecting and correcting fraud, corruption, and conflict of interests in relation to the measures supported by the RRF. The two institutions consider it essential for Member States to collect and record data on the final recipients and beneficiaries of Union funding in standardised and interoperable electronic format and to use a single data mining tool to be provided by the Commission (see here, 4).

Under Regulation (EU) 2021/241, the Commission must make available to the Member States an integrated and interoperable information and monitoring system, including a single data-mining and risk-scoring tool to access and analyse the relevant data with a view to widespread application of the system by Member States, for which the support of the Technical Support Instrument is available (art. 7, para. 2 and art. 22, para. 4).

Therefore, with a view to monitoring RRF implementation, Regulation (EU) 2021/241 also introduced a set of common indicators for Member States to use to measure progress towards achieving its general and specific objectives (art. 29, para. 4), namely a common methodology for reporting social expenditure under the RRF by Member States (art. 29, para. 4) and a Recovery and Resilience scoreboard, showing progress in the implementation of the national RRPs in each of the six pillars (art. 30).

These tools must be adopted by the Commission through "delegated acts" (art. 33).

In September 2021, the Commission adopted Delegated Regulation (EU) 2021/2106 on supplementing Regulation (EU) 2021/241 of the European Parliament and of the Council, setting out the common indicators and the details of the recovery and resilience scoreboard.

The common indicators should be defined with a sufficient level of detail to ensure the data that Member States collect is comparable to, and can be aggregated for, displaying the implementation of the Facility at the Union level. If displayed at individual Member State level, common indicators should be presented in relative terms, also employing data from Eurostat to avoid misleading comparisons between Member States due to the different sizes or nature of the recovery and resilience plans (recital 8).

The Scoreboard has been operational since 31 December 2021.

Pursuant to art. 28 of Regulation (EU) 2021/241, the Commission and the Member States concerned are to foster synergies and ensure effective coordination between the Facility and other Union programmes and instruments. Therefore, the indicators included in the Scoreboard should be, as far as possible, coherent with those used for other Union funds (recital 9, Delegated Regulation (EU) 2021/2106).

Again, on 23 November 2021, the European Parliament (EP) adopted a resolution on the digitalisation of European reporting, monitoring, and auditing (2021/2054(INL)). The European Parliament points out that a bulk of reporting systems currently exists for each kind of European Investment programme, whether under direct, indirect, or shared management (such as the group of direct funds but also CAP, EFSIs, etc.). This fragmentation of data makes identifying the final beneficiaries extremely difficult, to the detriment of both transparency and the oversight of EU spending. In order to increase protection of the Union budget and the RRF from fraud and irregularities, the EP suggests introducing standardised measures to collect, compare, and aggregate information for the purposes of control and audit (Wahl, 2021, here).

Will common indicators and a scoreboard be sufficient to guarantee comparable data among Member States?

The BETKOSOL project recommends accelerating this digitalisation and standardisation process and to adequately monitor it, considering also the short time window for implementing the RRF and the fact that many countries have already started spending and monitoring through their national information systems.

Beyond this, how can effective and efficient national RRF control systems be guaranteed?

With regard to the control tasks already present in the supranational legal system, it is suggested that the Irregularity Management System (IMS) be valorised in terms of communications of frauds and irregularities by implementing and managing authorities under the RRF as well (see here, development section). At the moment, information on which countries have adopted this solution is not available.

Moreover, the ARACHNE risk-score tool also needs to be improved in terms of cohesion policies and the RRF. In particular, more MSs should adopt it and, where adopted, it should be promoted diffusely on the territory.

In this regard, it must be noted that, at the close of 2019, seven countries were not using ARACHNE4, and only 55% of all cohesion expenditure had been uploaded to ARACHNE (as reported by Rubio, 2021, p. 5, here).

Finally, more information should be provided on the functioning and potentiality of the FENIX IT tool for the transmission of RRF's data from the MS level to the European one (see here, p. 11).

L) To better specify the role of OLAF, the EPPO, and the National Court of auditors: what kind of controls for the RRF in addition to self-evaluation and EC assessment of targets and milestones? In other words, if the EC commission monitors the ongoing implementation of the RRP by national administrations, who will control the national controllers?

With the adoption of the RRF, new kinds of resources will enter the sphere of activity of the EU controlling bodies, as happened already with emergency measures during the pandemic (see above in this deliverable).

For example, from the quantitative point of view, the main areas of the OLAF initiative have been, until now, the Structural Funds and the Common Agricultural Policy.

OLAF's Management Plan 2022 (pp. 3-4) states that, for the moment, in order to safeguard the Multiannual Financial Framework (MFF) 2021-2027 and the RRF from irregularities, fraud, and corruption, the institution will cooperate closely with other Commission services as well as EU bodies such as the ECA and the EPPO, EUROJUST, and EUROPOL.

OLAF will also:

1. pursue working closely with Interpol, Ameripol, the World Customs Organisation, and other partners;
2. make use of the experience it gained from screening the national RRF plans.
3. investigate irregularities and instances of suspected fraud and corruption during the implementation of the plans, as it does in all areas of EU funding.
4. support the Member States with prevention activities such as strategic analysis and training, also providing financial support from the new EU Anti-Fraud Programme.
5. help the Commission design efficient audit strategies relating to the Member States' internal control systems.

The following different phases of OLAF's involvement in the RRF were detailed during the 31st Meeting of the OLAF Anti-Fraud Communicators' Network (26 January 2022, Brussels, minutes available here):

"First phase: the early definition of the legal framework. OLAF contributed to make sure there would be sufficient anti-fraud provisions in the RRF Regulation.

Second phase: screening the national plans. Each Member State had to provide EU institutions with RRF plans structured by targets and milestones, including some reporting and control mechanisms. OLAF has been actively involved in screening those plans and has contributed by making comments and changes to national plans.

Third phase: information exchange. OLAF played an active role in developing and participating in 'Operation Sentinel', which is an important part of sharing information on fraud-related issues with partners. OLAF was in regular contact with Member States to help support and protect their national plans via technical anti-fraud meetings with the anti-fraud coordination structures or through various bilateral discussions with national authorities. During these meetings, the RRF was always on the agenda and will continue to be so in the future. During this period, OLAF reached out to different actors, sharing best practices and assessing what could be improved.

Fourth phase: implementation. Now that the several RRF plans are being implemented and the funds start flowing into the Member States, OLAF will undertake its regular anti-fraud work according to its existing mandate and tools".

The ECA oversees the management of the entire EU budget and conducts independent audits of the different EU spending programmes. However, it focuses on the aggregate EU results rather than what happens in the Member States. If, during its work, the ECA identifies cases of suspected fraud, these are reported to OLAF (see Rubio, p. 6, here).

What will its role in the case of the RRF plans be, given that these are nationally based? Even though it will have access to national monitoring systems, how will it operate with disaggregated data? Will the RRF scoreboard and the FENIX IT tool be sufficient? Will coordination with National Courts of auditors be fostered?

In the event of irregularities or fraud in the RRF, OLAF, like the EPPO and the European Court of Auditors, is therefore required to intervene (Reg. (EU) 2021/241 recitals 55 and 72 and article 22(2(e)).

In particular, Member States must:

1. expressly authorise the Commission, OLAF, the Court of Auditors and, where applicable, the EPPO to exert their rights as provided for in art. 129(1) of the Financial Regulation

2. impose obligations on all final recipients of funds paid out for the measures concerning the implementation of reforms and investment projects included in the recovery and resilience plan, or to any other persons or entities involved in their implementation, to expressly authorise the Commission, OLAF, the Court of Auditors and, where applicable, the EPPO to exert their rights as provided for in Article 129(1) of the Financial Regulation and to impose similar obligations on all final recipients of disbursed funds;

However, no further details have been provided, also considering the *sui generis* management style adopted for the RRF. In fact, the latter has been defined as a special form of direct management (see Arwidi-Kreith, 2021, here).

It is suggested that the controlling role of OLAF, the EPPO, and the ECA (individually and coordinating with others) in the RRF be properly specified and regulated well in advance. In particular, considering the importance of protecting EU financial interests, it is fundamental to provide these institutions with adequate resources.

M) If the role of OLAF and the EPPO in the RRF cannot be totally ruled out , it is essential to resolve the issue regarding the way Regulation (EU) 2021/241 defines "irregularity" quickly

In addition to the urgent need to clarify the institutional spaces for all the EU players involved in protecting the EU's financial interest to act, another problem of coordination stems from the definition of "irregularity" embraced by Regulation (EU) 2021/241.

The issue involves the joint activity of OLAF and the EPPO.

As some authors have mentioned, there is a serious conceptual problem (see Arwidi-Kreith, 2021, here).

In the first point of the article mentioned above, it is observed that the RRF Regulation introduces the notion of "serious irregularities," which cannot be found as such in the rules governing the previous and current Multiannual Financial Frameworks (see, for example, the current Financial Regulation that uses the term "serious irregularity" in its art. 236 in relation to budgetary support to a third country, yet without further defining the term).

For example, recital 53 of the RRF Regulation defines serious irregularities as being "fraud, corruption and conflicts of interest."

This is an alternative to the dichotomy of "criminal" versus "administrative" acts used in other areas, for example in the annual reports on the protection of the EU's financial interests, which distinguish between "fraudulent" and "non-fraudulent" irregularities (PIF Report 2020, 2019, pp. 13-14).

In addition to the arrangements in place to avoid double funding from, for example, the RRF and other Union programmes, Member States are required to detail in their national recovery and resilience plans their system to prevent, detect, and correct serious irregularities; the Commission must, in turn, assess the measures outlined in the plans (art. 18(4), lett. r and art. 19(3), lett. j, Regulation (EU) 2021/241).

Another example is the Commission's option to reduce financial support proportionately and recover amounts from the Member States in the event of serious irregularities not corrected by the Member States, or, in the event of a "serious breach of an obligation" involving the financing agreement concluded between the European Commission and the respective Member State (art. 22(2,5), Regulation (EU) 2021/241).

This issue is of particular practical importance.

It is suggested that the discussion on the sphere of competences between the EPPO and OLAF on this point be moved forward as much as possible.

Part II

Recommendations for the Italian case

Part I

Recommendations for the Italian case

Section I
The administrative recommendations

Prof. Marta Simoncini, Dr Valerio Bontempi and Dr Elisabetta Tatì

2.1 The state of the art: controls, simplification, digitalisation and the National Recovery and Resilience Plan

Italy manages European resources under different regulatory regimes. Alongside the European Structural and Investment Funds (EFSIs) and the Common Agricultural Policy (CAP), the majority of European resources now also comes under the National Recovery and Resilience Plan (NRRP).

Even though recommendations will be mainly based on NRRP resources, many aspects will be relevant for other European funds as well, considering the national effort to coordinate European funds from different sources, at least in terms of data interoperability. It must also be observed that, as the NRRP is quite a recent plan, some recommendations may be only temporary. As the BETKOSOL project comes to a close, for example, the issue regarding implementation of the plan is shifting from the phase centred on calls by central managing administrations to that of the role of the implementing bodies, such as local authorities. The nature of the plan itself is currently the object of debate among scholars (Lupo, 2022, here; Clarich, 2021, here; Sciortino, 2021, here; see also the video recording of the BETKOSOL final conference here for the speech by Prof. Marco D'Alberti).

The protection of public resources, now especially in the light of the NRRP, depends not only on the capacity of the administrations to act promptly and effectively, but also on the capacity of the control system to deter irregularities and detect fraud in time to adjust the process of achieving milestones and targets (in terms of prevention). If it is not timely enough, the control system will intervene to adjust the processes in terms of the future, and it will act to block and, eventually, to recover improperly spent resources. The final recommendations presented here will look mainly at administrative control measures (see, for example, the 2021 National Court of Auditors (NCA) Report, here, p. 172). However, the role of administrative judicial review must at least be mentioned (see also Task 3, BETKOSOL D1, here). First of all, it is significant that NRRP proceedings are now coming before administrative tribunals for a variety of reasons, such as for exclusion from tendering procedures due to inadequate applications, formal irregularities or the lack of clear criteria for comparative assessment (see recent Regional Tribunal Valle D'Aosta Judgment no. 119/2022, also mentioned by Prof. della Cananea, during the BETKOSOL final conference here). News are showing us how the limited time available for implementing NRRP investments brings some drawbacks, such as the scarce participation of implementing authorities or final beneficiaries, in part due to the complexity of the documentation and projects required (see below). There may also be, on the contrary, too many applications, but with the beneficiaries' difficulties to provide all the details required by the call, while on the handling side, there may be issues in managing the comparative selection process. Secondly, the role of the NCA will be analysed in the following recommendations exclusively from the point of view of its control functions. However, we should recall the NCA's potential role as an accounting jurisdiction, also working to protect the EU's financial interests in the light of new kinds of resources. This, although the NCA seems to be experiencing a shift towards control functions to the detriment of its judicial role, also because of the recent reforms concerning the responsibility of public officials under Decree Law no. 76/2020 (Rivosecchi, 2021, here) and notwithstanding the delicate balance it must maintain with the role of Criminal Courts in prosecuting

crimes involving financial interests (on the collaboration between criminal and accounting jurisdictions, see below).

From a substantial point of view, the challenge of protecting the EU's financial interests in the use of such resources has to address the complexity of Italian multilevel governance as well as the systemic issues that affect the Italian administration, such as the hypertrophy of administrative organisation, the lack of skills in public administrations, and the inefficiency of administrative action. However, Italy has developed some experience and best practices in the management of funds under the cohesion policy, and these will benefit implementation of the NRRP (See BETKOSOL D1).

The Council's Implementing Decision 2021/0168 regarding the approval of the assessment of the Italian NRRP, together with a later Decree of the Ministry of the Economy and Finance (*Ministero dell'economia e delle finanze*, MEF) that assigns the related resources, constitute the legal basis for the activation, by the responsible managing administrations, of the procedures to concretely implement the national plan.[1]

In the meantime, at the end of May 2021, the Government adopted Decree Law no. 77/2021, also known as the "Simplification Decree" for the year 2021 (*Decreto semplificazioni 2021*), to simplify administrative procedures in view of implementing the NRRP. It details NRRP governance at different levels.

In a nutshell, five *silos* make up the "Recovery Governance". Firstly, there is the NRRP control room, the so-called *Cabina di Regia*. Secondly, there is the central NRRP coordination hub, located at the Ministry of Economy and Finance - General Accounting Office (MEF-RGS, together with the dedicated IGRUE office for the Audit phase). Thirdly, for the coordination of implementation procedures, there are the responsible central administrations with their specially created NRRP Units and systems of management and control (*Sistemi di gestione e controllo*, Si.ge.co). Fourthly, there is a broad field of implementing administrations. Lastly, there is the category of final beneficiaries (administrations, private actors or, more generally speaking, citizens).

The five silos of recovery governance:

1. The control room for the NRRP (*Cabina di Regia*): political steering and technical support.
2. Central coordination of the NRRP (*Servizio centrale per il PNRR*), located at the Ministry of economy and finance - General accounting office (*Ministero dell'economia e delle finanze-Ragioneria generale dello Stato*, MEF-RGS), with the dedicated IGRUE office for the Audit phase. See below for more details.
3. The central managing administrations (*amministrazioni titolari*) with their specially created NRRP systems of management and control (*Sistemi di gestione e controllo*, Si.ge.co).
4. The broard field of implementing administrations (*soggetti attuatori*).
5. The final beneficiaries (administrations, private actors or, more generally speaking, citizens).

The steering board, called *Cabina di Regia*, falls under the Presidency of the Council of Ministers (PCdM) and is chaired by the President of the Council of Ministers. It has political steering powers, initiative powers and carries out horizontal and vertical coordination functions among central administrations as well as with territorial entities (art. 2). Membership is variable: for example, not all the ministers that usually participate in the Council of Ministers are involved at the same time, but only those specifically interested in discussion on a specific matter are called upon to participate. The same variability characterises the involvement of representatives from regional and other territorial branches of State as well as relevant associations representing civil society. In addition, Decree Law

[1] See MEF Decree, 6 August, 2021, *Assegnazione delle risorse finanziarie previste per l'attuazione degli interventi del Piano nazionale di ripresa e resilienza (PNRR) e ripartizione di traguardi e obiettivi per scadenze semestrali di rendicontazione*.

77/2021 identifies other support for the *Cabina di Regia* in the following structures: two inter-ministerial committees (art. 2.4), a permanent committee for economic, social and territorial partnership (*Tavolo permanente per il partenariato economico, sociale e territoriale*, art. 3), and a Technical Secretariat (art. 4). There is also an intern-ministerial committee for the transition to digital (art. 8.2, Decree Law no. 22/2021) and one for ecological transition (art. 57-*bis*, Legislative Decree no. 152/2006, the so-called Environmental Code, introduced recently by Decree Law no. 22/2021). The Technical Secretariat is internal to the PCdM (art. 4) and should coordinate with another unit, internal to the PCdM's Department of Legal and Legislative affairs, competent for the rationalisation of legislation and better regulation (*Struttura di missione per la razionalizzazione e il miglioramento della regolazione*, art. 5).

The MEF supervises the implementation of the plan and is responsible for sending payment requests to the European Commission based on the fulfilment of the expected objectives. In accordance with art. 22 of Regulation (EU) no. 241/2021, art. 6 of Decree Law no. 77/2021, an internal office of the RGS at MEF, the so-called *Servizio centrale per il PNRR*, is the national reference point for NRRP monitoring tasks. This centralised system of governance aims to support the smooth achievement of the national targets. In fact, the centralisation of the decision-making process avoids issues of administrative *impasse*, especially one triggered by contrasting opinions among administrations or by the non-compliance of territorial administrations (see arts. 12-13, Decree Law no. 77/2021; see below for more details).

Other central administrations play a key role in the NRRP. Despite the competence of the Regions and local governments, the (short) time constraints on spending and the wide-ranging consequences of the pandemic across the national territory have led to the introduction of a system of governance based on central ministerial co-ordination.

According to the Technical Annex to the NRRP, implementation of the national recovery plan follows ordinary administrative procedures for managing public investment programmes and projects (p. 3). Consequently, the technical-administrative structures already existing in the central-regional-local administrations will be involved, so that projects can start without delay. Single central administrations, mainly ministries, the so-called *amministrazioni titolari*, are responsible for specific investments and reforms, and they will send their reports to the central coordination structure at the MEF. All the other central, decentralised, and regional-local administrations will act as implementing actors (*soggetti attuatori*) or direct beneficiaries alongside other private actors (also subject to specific controls). If the centralisation of key control and coordination functions at the MEF and other ministries has a significant impact on regional and territorial autonomy in managing EU resources, the importance of these levels of government in implementing the NRRP cannot be wholly denied.

Embedded in this system of governance, Decree-Law no. 77/2021 established evaluation and control structures to curb corruption, conflict of interest, irregularities, and fraud, as well as to promote transparency vi-à-vis institutions and citizens. The leading actor is the so-called *Ispettorato Generale per i Rapporti finanziari con l'Unione Europea* (IGRUE), a Department of the General Accounting Office within the Ministry of Economy and Finance (*Ragioneria generale dello Stato - MEF-RGS*), which works in coordination with the Financial Police (*Guardia di Finanza*) and the National Court of Auditors (*Corte dei Conti)*. According to article 7 of Decree Law no. 77/2021, IGRUE – in one of its internal branches but with specific features of independence – it is also the Audit authority for the NRRP (art. 22.2, Regulation (EU) no. 241/2021). art. 7.1 specifies that IGRUE it to coordinate its activity with the RGS's territorial branches (see below for more information).

Articles 8 and 9 of Decree Law no. 77/2021 cover the management capacity of the central and territorial authorities in the implementation phase respectively. These provisions explicitly refer to internal control over the administrative and spending processes in order to avoid irregularities, fraud, and conflicts of interest. The ordinary system of internal (alongside external) control should contribute to protecting the EU's financial interests. In fact, most of the NRRP objectives depend on the capacity of territorial, decentralised, and autonomous administrations to participate in, and effectively respond to, public calls or to use resources transferred from the level above them.

In addition, another MEF circular provided each responsible central administration with dedicated Si.ge.co. aiming to prevent, detect, and rectify frauds, corruption, conflicts of interest, and the duplication of funding under the NRRP.[2]

In conclusion, the decision to improve central institutional structures currently responsible for national economic planning and funding could have positive effects on the development of best practices and "good" spending practices across the country. Moreover, the proposed model of governance significantly keeps political instability outside the institutional mechanisms (with critical voices in the legal sciences, for example for the scarce involvement of the National Parliament, De Minico, 2022, here; Lupo, 2022, here; see also the video recording of the BETKOSOL final conference here for the speech by Prof. Nicola Lupo). Except for the *Cabina di regia*, of a political nature, the duration of all the other central offices and bodies deputed to NRPP implementation is linked to the duration of the Plan and not to that of the political offices. It should also be noted that the Italian decision to centralise NRRP governance has kept the role of the regions as managing authorities separate, while they have lengthy experience in the management of other EU funds. This solution can be justified in terms of working balance: while the Regions will be mainly engaged, as always, in managing the EFSIs, central administrations will manage the NRRP and the National Plan complementing it. At the same time, this also means a loss of regional expertise in the management and control systems and the know-how related to the difficulties faced daily by territorial/decentralised authorities (see Trapani, 2021, here, for a comment on the involvement of the regions in the NRRP governance). The latter will be the only ones called, in fact, to concretely implement the majority of the investments, and they will not be able to count on *ad hoc* regional support in implementing the NRRP. A first consequence of this concentration of efforts is already visible: the management of ESIFs is suffering from delays and re-planning (see the NCA's Report, 2021, here, pp. 127 ff. and specially p. 170-171). In the medium term, a second consequence could be that once the NRRP deadline expires, new expertise will focus more on central administrations at the expense of regional, decentralised, and territorial ones, although the latter can all be NRRP implementing authorities.

Of the abovementioned five *silos* (see the box above), only the second, third, and fourth will be the object of the fairly practical observations and recommendations to follow, meant to facilitate understanding of how to improve the system of controls involved in the protection of the European and National financial interests. Thus, procedures and controls concerning private actors and final beneficiaries are excluded in the recommendations. Moreover, the Italian recommendations focus more on the ability of the administration to handle NRRP investments than the parallel reform process. However, when relevant to the protection of the EU's financial interests, current and future reforms are mentioned.

Before going into detail, the paper will propose some insights gleaned from interviews carried out during working package no. 3 (WP3) of the BETKOSOL project, even though they are not necessarily linked to the NRRP.

2.2 Risk evaluation: general trends concerning the protection of the EU's financial interests

In Italy, both national (the Committee for the Fight Against Community Fraud - COLAF - and the Anti-corruption Authority - ANAC) and local (*Regione Lazio* and *Roma Capitale*) institutions are involved in the auditing procedures relating to the spending of EU funds. Previous empirical research under WP3 covered both national and local level institutions. What emerged is that the Italian public administrations interviewed perceived some changes to 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 near future.

[2] MEF Circular no. 9 of 10 February, 2022 (*Piano Nazionale di Ripresa e Resilienza (PNRR) – Trasmissione delle Istruzioni tecniche per la redazione dei sistemi di gestione e controllo delle amministrazioni centrali titolari di interventi del PNRR*).

With regard to the pandemic, COLAF demonstrated that addressing the new risks of pandemic-related irregularities requires closer coordination among the various competent structures of the EFSIs. This was necessary to respond both to last year's changes relating to the new "simplified" and "accelerated" procedures (introduced by Decree-law no. 18 of 17 March 2020), and continuing difficulties in performing checks and audits in the normal way, partly due to the emergency restrictions (COLAF, answers 5, and 6, BETKOSOL D4 Databook). In addition, ANAC reported decreased transparency in the allocation of public funds during the pandemic because of the much more extensive use of direct awards and negotiated procedures. The need to ensure economic recovery increased the risk of illegal behaviours, with the danger of excluding virtuous companies from the public procurement market. ANAC thus recommended that the reform of the Code of Public Contracts expected by 2023 should include effective reporting mechanisms. Control will be easier at the contract award stage, where there is widespread control by competitors, while control will be more difficult at the contract execution stage, which is the one most at risk because control is carried out only by the public authorities and the contracting authority (ANAC, answers 5, and 6, BETKOSOL D4 Databook).

Many interviewees mentioned the complexity of the legal framework and control burdens, both at the national and European levels. The perception is that some obstacles to the fair management of EU resources stems from the intricacy of the rules. For example, the reference contact from the Lazio Region observes the complexity of reporting procedures under the EFSI management system, although this may depend on the shortage of adequate staff, at least in the local sector (REGIONE LAZIO, answer 3 BETKOSOL D4 Databook). In the case of Roma Capitale, the manager interviewed spoke of a complex system of sources of law, starting with the city's management and control system and continuing with system of the Agency for Territorial Cohesion and the Italian Public Procurement Code (ROMA CAPITALE, answer 2, BETKOSOL D4 Databook). Consequently, coordination issues arose with national authorities and other local ones (ROMA CAPITALE, answer 3, BETKOSOL D4 Databook). Of course, it may be argued that it is precisely this rigorous system that guarantees the transparent use of European structural funds, considering that all the operations are fully controlled through first-level controls. In addition, a sample of these operations can be subjected to second-level or external controls (see BETKOSOL D1). Indeed, the simplification of the controls system has been an important point of focus in the past. There are an estimated 5,000 plus pages of regulations and guidelines for European funds alone. Then, everything is implemented according to national regulations and tenders, with the result that the regulations become very burdensome, and irregularities can arise (FONDIRIGENTI, answer 1, BETKOSOL D4 Databook).

Secondly, interviews revealed the need to stabilise rather than change the existing regulatory framework in order to attract investment, provide clear information for investors, and allow better training of public administration and contracting authorities. In short, all the actors involved must have time to understand and implement the regulations introduced over the years (see, for example, ANAC, answer 4, BETKOSOL D4 Databook; Confindustria, answer 4, BETKOSOL D4 Databook).

Thirdly, there is a common understanding that the implementation of the NRRP determines and will continue to determine several innovations in the existing regulatory framework (see, among others, Roma Capitale, answer 6, BETKOSOL D4 Databook; Fondirigenti, answer 5, D4 BETKOSOL Databook), both for the mechanisms of control and management of funds (among other things, there is a dedicated control body and an innovative reporting mechanism focused on achieving the milestones and concrete objectives in close connection with the actual disbursement of funds) and the changes necessary for some existing regulations (there are, for instance, some changes to the public contract code planned for 2023),

2.3 Recommendations concerning external controls and institutional coordination

2.3.1 Some extra initiatives in the national system of "external" and "ex ante" controls

Art. 22, Regulation (EU) 241/2021 provides that:

"In implementing the Facility, the Member States, as beneficiaries or borrowers of funds under the Facility, shall take all the appropriate measures to protect the financial interests of the Union and to ensure that the use of funds in relation to measures supported by the Facility complies with the applicable Union and national law, in particular regarding the prevention, detection and correction of fraud, corruption and conflicts of interests. To this effect, the Member States shall provide an effective and efficient internal control system and the recovery of amounts wrongly paid or incorrectly used. Member States may rely on their regular national budget management systems."

If implementation of the NRRP largely follows ordinary administrative procedures (see also the NRRP's Technical Annex), the entire national administrative system in general and the control system in particular should work appropriately to realise it. However, there are significant administrative inefficiencies, including in the system of controls in the Italian legal order (See BETKOSOL D1, Italy).

Past reforms and, more recently, "emergency" simplification measures mostly brought in under Law Decree no. 77/2021 have addressed some of the main administrative inefficiencies (e.g., speeding up administrative procedures, changing powers among levels of governments, softening administrative responsibility for managers in order to foster decisionism, centralisation of controls, etc.).

In a recent report by the national Court of Auditors (NCA) based on the independent assessment provided by the administrations in charge of the actions to be taken during the first semester 2022 (T1-2022), no specific risks are estimated for a significant portion of the objectives of the current half year. However, in other cases, delay in legislative or administrative approval procedures have been deemed the main obstacles to achieving the envisaged goals. The risk factors associated with the complexity of the procedures have resulted in the need for technical support, deficiencies in the governance of local authorities, and the loss of funding, in particular in the research and innovation sector (NCA Report on the implementation of the NRRP, March 2022, here, 106).

- Specific recommendations:

A) The timeframe for ex-ante legality controls (*controlli preventivi di legittimità*) by the national Court of Auditors must be revised in the light of the NRRP implementation

Article 9(3), of Decree-Law no. 77 of 2021 expressly provides that:

"The acts, contracts and expenditure measures adopted by the administrations for the implementation of the NRRP initiatives shall be subject to the normal legality checks and administrative accounting checks provided for by the applicable national legislation".

These controls include prior verification of compliance with the law by the Court of Auditors, as provided for by art. 3(1) of Law no. 20 of 1994. Preventive control of lawfulness reinforces the effectiveness of the administrative action and therefore works as a suspensive condition on the production of legal effects.

Given the current state of urgency and the need for simplification, art. 50(3) of Decree-Law no. 77 of 2021 permits a derogation, but only to the sector of public contracts. Public contracts financed, in whole or in part, using NRRP resources must become effective upon conclusion of the contract.

In the case at issue, the need to streamline, simplify and speed up procedures has led the legislator to anticipate, through specific legislation, the effectiveness of contracts implementing the NRRP to the time of their signature, clearly considering the need for speedy procedures to be a priority.

However, immediate enforceability of the contracts in no way precludes the Court of Auditors from exercising its preventive control of lawfulness. In this way, lawfulness and effectiveness are kept separate in order to speed up and streamline the procedures underlying Decree-Law no. 77/2021 (on this respect, see the interesting NCA's deliberation issued on 22 January 2022, here).

As a result, external control does not interfere with administrative action. However, the risk of the unlawful use of EU funds must be tackled in a timely manner. If the Court of Auditors' audit comes soon after the conclusion of the contract, mismanagement can be detected and remedied. If the Court of Auditors identifies unlawful measures, the administration must annul the unlawful act and remedy the legal effects that have already been produced, including recovery of the unlawfully allocated resources.

If the possibility of immediate execution is extended beyond the area of public contracts implementing the NRRP, all administrative actions to support the implementation of the NRRP could be accelerated.

There is in fact a concrete need for the central managing administration to use all the time available to implement NRRP decisions/acts: they often involve extremely complex investments, also respecting the short NRRP deadlines.

It would, of course, be best if the Court of Auditors' audit could be completed soon after the NRRP implementing act becomes effective. Otherwise, there is a risk that an unlawful act, which will have to be annulled, may in the meantime produce numerous effects.

The question of timing therefore needs adequate regulation.

To minimise the risks of ex-tunc annulments, ministerial accounting offices (*Uffici di bilancio*) need to play a greater part. The Court of auditors, perhaps working alongside the MEF, could provide guidelines or check-lists for carrying out *ad hoc* controls of investments under the NRRP.

Effective internal control over ministerial decrees implementing NRRP investments could speed-up external controls and guarantee a better performance. At the same time, this solution will solve the problem of time constraints on NRRP implementation.

B) To clarify the nature and reach of the controls/coordination carried out by the Ministry of Economy and Finance on NRRP administrative acts adopted by other ministries

In the light of the *sui generis* model of management that Regulation (EU) 2021/241 prescribes for the RRF, in Italy the MEF is the "super" managing and controlling authority for the entire NRRP. However, in operational terms, NRRP implementation depends on the actions of many other central administrations as "sectorial" managing authorities ("sectorial" insofar as they refer to the specific lines of investments under each ministry's responsibility). In these terms, the following control mechanism has been considered "external" and included in this section, although it is formally part of the self-evaluation system.

RGS-MEF Circular no. 21/2021 requires the MEF to supervise the acts through which central administrations manage resources. This supervision of the achievement of targets and milestones may prove particularly useful in the short term, when ministerial Managing and Control Systems (*Sistemi di gestione e controllo*, Si.ge.co.) are not fully operative (see below for further details), and NRRP expertise is still lacking in the public sector. In the future, on the contrary, Ministerial Si.ge.cos set up to implement NRRP will be fully operative and better able handle an NRRP (thus lowering the risk of irregularities).

The Circular holds that:

"*Per quanto riguarda, infine, la fase di definizione degli strumenti e/o provvedimenti di attuazione previsti da codeste Amministrazioni per l'attuazione delle linee di intervento di rispettiva competenza, si ritiene opportuno un esame congiunto degli stessi con la scrivente Ragioneria generale dello Stato, prima della loro pubblicazione, al fine di consentire una valutazione preliminare di coerenza con i*

requisiti del PNRR" [Lastly, regarding the phase in which the implementation measures provided by these *(central)* administrations for the implementation of NRRP initiatives under their responsibility are defined, it is deemed appropriate to jointly examine them with the General Accounting Office before publication so as to permit a preliminary assessment of compliance with NRRP requirement].

This seems *sui generis* ex-ante control by a specific ministry over other central administrations, limited in time and subordinate to NRRP implementation requirements. However, the nature of this joint control is ambiguous: what does ensuring compliance mean? Is this control regarding the legality of the adopted measures? Or is it an assessment of the merits, aiming to measure performance? Or is it a form of coordination? **These elements need clarification.**

In addition, it should be borne in mind that the source establishing the control/coordination, and the wording of the MEF circular suggest that it should also maintain a certain degree of informality and "softness". For these reasons, it is strongly recommended to clarify the nature and the reach of this measure. **Considering that this MEF control represents an additional procedural layer and adds a burden to an already complex procedure with tight deadlines, it is highly recommended to assess its actual necessity in terms of achieving milestones and targets.**

For example, the first NCA report on implementing the NRRP (2022), used, among other things, as an indicator of the average duration of the time window, allowed for interested beneficiaries to participate in calls funded by NRRP investments. This indicator shows, on the one hand, the celerity of the implementing procedures under the NRRP, but it also shows the organisational effort required of the recipients to express their interest and take part in the initiatives, especially where they are concentrated within the same time frame (p. 115 of the NCA Report on implementation of the NRRP, March 2022, here; see below for more details).

2.3.2 Some extra initiatives in the national system of "external", "in itinere", and "ex-post" controls: the importance of institutional coordination of the controlling function

External controls have recently been reinforced in the light of the NRRP, especially regarding the role of the NCA (see *supra* for *ex ante* controls). For example, in terms of *in itinere* and *ex post* controls, two provisions have been adopted in Simplification Decree no. 76/2020 (art. 22, on the so-called "concomitant control", initially introduced by art. 11(2), Law no. 15/2009) and in Simplification Decree no. 77/2021 (art. 7(7) on management control under art. 3(4), Law no. 20/1994). These provisions are bringing changes to the internal organisation of the NCA (e.g., the functioning of the *Collegio del controllo concomitante).*

However, apart from issues of internal coordination in some institutions, it appears particularly urgent to commit to setting up external coordination among the different institutions with control functions in various disciplines.

The *Guardia di Finanza* or "fiscal police" is a military police corps under the control of the Ministry of Economy and Finance, with general responsibility for financial and economic matters. As already described in BETKOSOL D1, Italy, the Guardia di Finanza plays a leading role in the overall anti-fraud surveillance system for the protection of the European budget. The Guardia is not only a member of the C*omitato per la lotta contro le frodi nei confronti dell'Unione Europea* (COLAF) but a fundamental Economic and Financial Police Force (COLAF Report for 2020, 2021, here, 2).

Functions of the Fiscal Police:

On the operational level, the territorial units of the Guardia di Finanza are engaged, on the one hand, in the **execution of judicial police investigations** concerning disbursements falling within the boundaries in question, namely the offences referred to in articles 316-bis, 316-ter, 640(2), no. 1) and 640-bis of the Penal Code. On the other hand, they proceed with **administrative**

actions brought by applicants and/or beneficiaries of the resources in question, using thier economic-financial police powers under Legislative Decree no. 68 of 19 March 2001 and, upon delegation by the Special Unit for Public Expenditure and Repression of Community Fraud, have anti-money laundering powers under Legislative Decree no. 231 of 21 November 2007.

On 17 December 2021, the MEF signed a specific memorandum of understanding with the Fiscal Police regarding the "network of NRRP anti-fraud contacts". This constitutes the general reference framework for the forms of inter-institutional cooperation in which all the central administrations dealing with initiatives envisaged by the NRRP will take part in order to strengthen actions to protect the legality of administrative action concerning the beneficiaries and use of NRRP funding. This is the only memorandum of understanding (MoU) in Europe that provides for the express involvement of a special military force in the control system.

Beyond the MoU, the Guardia di Finanza ensures every support to, and cooperation with, COLAF, which is the highest national body directing and coordinating the fight against fraud, feeding dialogue between the competent national bodies and structures. The possibility of facilitating meetings between institutional actors at the highest level soon led to entering into specific cooperation agreements, such as the accord between the General Prosecutor's Office of the National Court of Auditors (NCA) and the new European Public Prosecutor's Office (EPPO). This resulted in the first cooperation protocol between the latter and an accounting judiciary of an EU Member State, signed on September 13, 2021(COLAF Report for 2020, 2021, here, 2).

Recently, on February 2022, a MoU was also confirmed between MEF-RGS and ANAC regarding collaboration between the General Inspectorate of Public Finance-Inspection (I.Ge.S.I.Fi.P.) and ANAC to carry out inspections regarding the regularity and cost-effectiveness of tendering procedures and the execution of public contracts (available here). Moreover, in December (2021), ANAC signed a new MoU with the NRRP's *Cabina di regia* (available here) concerning implementation of the contracting authorities' and the central purchasing bodies' qualification system, also including additional forms of collaboration (for example, in terms of the availability of information in the national database of public contracts, see below for more details).

The role of memoranda of understanding:

- MEF-Guardia di Finanza
- NCA-EPPO
- MEF(RGS)-ANAC

It will be recalled that, in the past, the European Commission would ask Member States to draw up their own "national anti-fraud strategy" (NAFS). Italy was among the countries that adopted an NAFS which, given the role of COLAF, impacts on all sectors of European funds.

The national anti-fraud strategy:

Since 2013, "national anti-fraud strategy" has been included in the Annual Report that, pursuant to Art. 54, par. 1, Law no. 234/2012, COLAF submits to Parliament at the end of the year. The 2020 COLAF Report states that, in order to respond in a dynamic, streamlined, and effective way to the needs relating to the monitoring and control phases of the EU long-term budget for the period 2021-2027 (new Multiannual Financial Framework and the Recovery and Resilience Facility), it will be essential for COLAF to implement the new NAFS guidelines and adapt them to the new context, especially with regard to the timeframe, the multiple combination of financial resources

available on various fronts, and the greater involvement of all COLAF members (2020 COLAF Report, pp. 62-62).

- Specific recommendation:

C) The coordinating role of COLAF must be further enhanced under the NRRP and the anti-fraud strategy.

As emerged from the interviews carried out with Italian institutions during the BETKOSOL project, one of the main problems relating to the management of funds and the protection of financial interests is the complexity of control procedures, and especially the lack of institutional coordination in the EU funds sector (BETKOSOL D4, under WP3).

The objective of the various components of the National Anti-Fraud Strategy (NAFS), requires, in fact, requires the special Committee to adopt particular organisational and coordination arrangements in view of the highly technical activity and the ensemble of administrations and figures involved at territorial and central level (COLAF Report for 2020, 2021, here, 2).

The national legal order currently seems to be experimenting with a dual system. On the one hand is the management and control system for traditional EU funds and, on the other, a system for the NRRP. As the implementing system and the self-evaluation are centralised in the hands of MEF, the external controlling system seems to be following the same destiny: that of appointing an *ad hoc* system, based, for example, on the Network of NRRP anti-fraud contacts.

However, it would be advisable to further bolster COLAF's existing role, merging various sectorial and territorial bodies. In particular, while the NRRP governance system is headed by the Steering Committee and the Permanent Committee for Economic, Social, and Territorial partnership (*Tavolo permanente per il partenariato economico, sociale e territoriale*), geared to involving territorial actors to some degree, no similar involvement is envisaged for NRRP control functions (for involvement in the implementation phase, see above and below).

How COLAF is made up

The mixed composition of the Committee reflects the involvement of different agencies, bodies and police corps cooperating to support OLAF at the national level. Thus, in addition to the Head of Department for European Policies, it comprises the Chief of the Financial Police Anti-fraud Unit (*Guardia di Finanza, Nucleo per la repressione delle frodi nei confronti dell'UE*, created by Article 55, Law no. 52/1996), the Directors General of the Department for European Policies, the Directors General of the Ministries responsible for the fight against tax and agricultural fraud and the misuse of European funds. These are appointed by the Chair and Members appointed by the national Conference of Regions, Cities, and Local Authorities.

Of course, this should be evaluated as an opportunity to better specify the composition of COLAF with regard to the coordination of controls relating to the NRRP or to valorise the important role of the Guardia di Finanza still more. It is no accident that the latter has a pivotal role in both the network of NRRP anti-fraud contacts and COLAF's traditional activities.

In addition, COLAF enjoys privileged dialogue with other EU institutions besides the European Commission, also deputed to control functions, such as OLAF. In this sense, as Regulation

(EU) 2021/241 also recalls, given the controlling role of OLAF, the EPPO, and the ECA, this national coordination hub could become a key "contact point" in the future.

2.4 Recommendations concerning digital coordination and data-interoperability

2.4.1 Improvements in the IT system in the light of NRRP implementation and beyond

The MEF has been re-organised with new offices and operative units, so it can work as the Central NRRP Service.

In short, the Central NRRP Service (*Servizio centrale per il PNRR*) receives reports from the administrations responsible for taking measures (*amministrazioni titolari*) and, once the relative targets and milestones have been achieved – and checks carried out – the Head of the Central NRRP Service submits payment requests to the European Commission (see above in addition to the Technical Annex to NRRP 6-7).

In addition, the RGS Department also operates as the NRRP Evaluation Structure, referred to in art. 1(1,050), Law no. 178/2020 (*Unità di missione NG-EU*. See also art. 6(2) and art. 7(2) of Decree Law no. 77/2021) which, working with the administrations responsible, performs the following functions:

- preparing and implementing the ongoing and ex-post evaluation programme of NRRP measures and projects, ensuring compliance with articles 19 and 20 of Regulation (EU) 2021/241;
- verification of the consistency between the target and the milestone also for the purpose of submitting the payment request to the European Commission referred to in art. 22 of Regulation (EU) 2021/241;
- contribution to verifying the quality and completeness of the monitoring data collected by the NRRP unitary monitoring system (the so-called Regis system, art. 1(1043), Law no. 178/2020);
- providing support for the evaluation of sector-based spending policies under the responsibility of the RGS and enriching the wealth of information relating to NRRP measures and projects, including through the development of transparency and participation initiatives for institutions and citizens.

In addition to the RGS, the *governance* model requires the establishment of an **NRRP Audit Body** responsible for the "internal control system", to protect the financial interests of the Union and more specifically to prevent, identify, report and correct cases of fraud, corruption or conflict of interest. The Audit Body is established at the IGRUE, which builds upon its previous key coordinator role for EFSI audits (see BETKOSOL D1 on this point) and operates independently of the other offices involved in implementing the Plan (see Technical Annex to the NRRP, 7).

Institutional complexity and controls alongside the organisational chain can be facilitated thanks to the availability of data and interoperability. In NRRP terms, the unitary information system (the so-called Re.Gi.s system), which will include a comprehensive database not only of projects funded by the NRRP but also by cohesion policies, is a response to the need to ensure effective control and careful monitoring of trends in public finance (see Annex 1, technical instructions, MEF circular no. 9/2022, pp. 33 ff.).

Re.Gi.s:

The MEF-RGS set up the Re.Gi.s., the information system for the multi-level management of the Plan under art. 1(1043), Law no. 178/2020. The system also serves to implement art. 1(1044), Law no. 178/2020 regarding the methods of collecting financial, physical and procedural implementation data for each project within the components making up the Next Generation EU.
The single monitoring system collects data on the progress of targets and milestones related to the implementation of the NRRP on three levels: financial (expenses incurred for the implementation of measures and reforms), physical (through appropriate indicators), and procedural.
Detailed information is collected by the actors (municipalities, regions, ministries, and other bodies) and made available to the individual. The administrations responsible for each measure validate and send it to the MEF, which aggregates and disseminates it centrally (COLAF Report for 2020, 2021, here, 66-67).
To this end, the central administrations responsible for initiatives are required to ensure the recording, collection, validation, and transmission of monitoring data consistent with minimum information, including data obtained from the implementing entities. They also refer to the provisions outlined in a specific User Manual, which constitutes the reference guide of the monitoring system used by Re.Gi.s, describing the contents and underlining the value of the data involved to produce a basis for reporting to the European Commission (art. 6 of the Decree of the Presidency of the Council of Ministers of September 9, 2021, an act devoted specifically to regulating the NRRP information system; see also Annex 1, technical instructions, MEF Circular no. 9/2022, 28 ff.).

When central administrations and implementing bodies already have an IT system capable of guaranteeing the recording and transmission of management, monitoring, reporting and control data relating to programmes and projects financed by national and/or community resources, these administrations may use them, in line with the principle of cutting public spending,

However, the local IT systems must be capable of properly managing NRRP information in accordance with Regulation (EU) 241/2021 and art. 1(1044) of Law no. 178. They must also ensure the recording and collection of the minimum financial, physical, and procedural implementation data required for the NRRP (whose minimum IT sets are indicated in art. 6(2) of the Decree of the Presidency of the Council of Ministers of September 9, 2021).

For this purpose, the so-called *Protocollo Unico di Colloquio* (PUC) version 2.2 of November 2020 will be suitably revised in the light of the implementation requirements of the NRRP.

The PUC is the reference document that specifies and describes the categories of information subject to monitoring. This information must be sent to the National Monitoring System operating at the MEF – RGS – IGRUE in the areas of the EFSI (for the *Sistema nazionale di monitoraggio*, SNM, BETKOSOL D1, Italy, see the PUC guidelines, 2.2 version, of November 2020, here).

Furthermore, the local IT systems of the central administrations responsible for initiatives and the implementing bodies must guarantee the transfer of the aforementioned data to the Re.Gi.s. system. This transfer must be carried out using the methods described, again, in the Re.Gi.s. system "User Manual" (see Annex 3, MEF's circular no. 31/2021).

- Specific recommendation:

D) To ensure a single and unambiguous information flow channel for implementing the NRRP, use of the IT systems of each Ministerial level should be reduced in the medium term, or clear information on the standardisation of data should come from the top.

In addition to the importance of reducing public spending, one aspect of the added value of the Re.Gi.s. system is that there is one channel for the information flow. Hence, the possibility of maintaining an existing local IT system could add complexity to the management and monitoring system, especially for the responsible central administrations.

In fact, regardless of the use of the Re.Gi.s. computer system or their own local IT systems, the central administrations responsible for initiatives and the implementing bodies have to implement the monitoring system through the timely and continuous transmission of data to the Central NRRP Service.

The data recorded in the Re.Gi.s. Computer systems are the only official references ensuring the disclosure of information on the state of implementation of the NRRP (Annex 1, technical instructions, MEF circular n. 9/2022, 63 ff.).

In addition, even though an updated PUC will soon be available, it would be advisable to harmonise the EU funds dataflow, especially between the EFSI and the NRRP.

2.4.2 Interoperability among databases and databanks: an extra effort for better systemisation and automation of controls

In the Annual Report on the Protection of the EU's Financial Interests (PIF Report 2020), the European Commission reported that most EU Member States need to develop new IT tools to collect and manage the information to implement the NRRPs and that interoperability between different national systems may not be guaranteed (p. 39). It has also been observed that many of the operations under the NGEU will overlap with the EFSI and that the parallel requirements on data collection, monitoring and reporting for recovery funds might turn into additional overload for public administrations (Corti-Núñez Ferrer, 2021, here, 11 ff.). Both issues are relevant to the Italian case.

The NRRP monitoring system will be a "unitary" system for investment policies as it will also detect the data relating to implementing initiatives financed using the fund complementary to the NRRP, as well as the data of the programmes financed by the EFSIs and the National Development and Cohesion Fund. Thus, a transversal factor in the system of prevention, detection, and the fight against irregularities (fraud/conflict of interest/double funding) is the use of integrated and cooperative IT tools capable of combining heterogeneous data from different information systems, such as the data warehouse and datamart in Re.Gi.s, but also through Arachne, the Community anti-fraud information system. The latter was already integrated with the EFSI monitoring system in the previous investment period (2014-2020), which was temporarily adopted in the first semester of the NRRP.

The information will also be supplemented by databases of national interest such as the CUP system (see below) for the univocal identification of investment projects, the ANAC database, and the commercial credit certification platform. Other datasets already present on the national scenario and with high interoperability potential are: the information accounting systems (addressing especially central administrations, also to be reformed) already available to the Department of State General Accounting, the Anti-Mafia database, and the *de minimis* aids databank, etc.

A general idea of interoperability potential is provided by Integrated Anti-Fraud Platform (PIAF-IT, see below).

Double financing and the CUP:

As for double financing, the Re.Gi.s. system allows a complete view of the distribution of funds in the territories and the related sources of financing. It therefore allows the verification and monitoring – within a single database – of the projects financed by the NRRP but also the EU instruments and national investment policies.

This wealth of unitary information, combined with the fact that in the context of national legislation all public investment projects have a Unique Project Code (CUP), makes it possible to check for

double financing. The CUP gives all public investment projects a univocal identity and is one of the main tools ensuring the transparency and traceability of financial flows, making it possible to intercept criminal infiltration and prevent double financing (for specific detail regarding the CUP, see art. 11 of Law no. 3/2003; the implementing regulations were adopted through CIPE inter-ministerial committee deliberations no. 143/2002 and no. 24/2004).
Art. 11 of Law no. 3/2003 was recently modified by Decree Law no. 76/2020, which allows administrative acts, including those of a regulatory nature and granting public funds or authorising the execution of public investment projects, to be annulled in the absence of the corresponding CUP (this new content is better specified in CIPE deliberation no. 63/2020).
The CUP is thus an essential element of the administrative acts of financing or authorisation for the execution of public investment projects, with a special resonance for the NRRP implementation. It is no mere coincidence that its role is carefully outlined in the Annex *Istruzioni tecniche per la selezione dei progetti PNRR* to the MEF's circular no. 9/2021.

Concerning ANAC and digitalisation, the authority's tasks regarding NRRP governance will consist in a follow up using the national database of public contracts based on the other univocal code, known as CIG (*codice identificativo di gara*), attributed to each public tendering procedure, the creation of a virtual file of economic operators, and the implementation of a single platform for administrative transparency. The extant national database of public contracts is open to interoperability and can therefore be fed with more data from other institutional subjects (such as electronic invoicing data). However, this potential can be fully exploited by further systematising the data and reusing information for the sake of transparency and the prevention of corruption.

It is also important to remember that art. 1(1042), Law no. 178/2020 mandates an information system to support financial flows relating to the NRRP. It is regulated by a MEF decree issued on October 11th, 2021 (named *Procedure relative alla gestione finanziaria delle risorse previste nell'ambito del PNRR di cui all'articolo 1, comma 1042, della legge 30 dicembre 2020, n. 178*). NRRP financial flows will be managed through special accounts. The resources are transferred to each responsible administration in proportion to their financial needs via a Central Treasury current account specifically set up according to the requirements of the above-mentioned MEF Decree. This refers to a specific financial support information system activated by the Central NRRP Service to ensure the constant monitoring and traceability of transactions. It arranges payments to the final recipients of the resources and the transfers to other administrations/bodies responsible for implementing individual projects (art. 2(4) and art. 6).

- Specific recommendations:

E) The interoperability of databases and databanks is essential to coordination: the NRRP should be seen as an "occasion" not to miss

These support tools, with the wealth of information they contain, are a valuable source of data and information essential for combatting fraud, above all their ability to identify potential cases of conflict of interest and double funding. However, **interoperability among databases and databanks would enhance the control function in terms of systemisation and automation**.

For example, art. 6(4) of the MEF Decree of October 11th, 2021 on financial management system pursuant to art. 1(1042), Law no. 178/2020 needs to be coordinated through the Re.Gi.s. system, the unitary management system put in place under art. 1(1043) of the same law .

Even though this "coordination goal" is mentioned in many documents on implementation, it is not always clear how the goal is to be achieved in terms of connecting with external control systems and interoperability with other data sources. **More transparency is needed on this point.**

F) COLAF support for data coordination should be a priority.

COLAF has a crucial role in managing interoperable databases and databanks. Its institutional coordination functions could effectively support data coordination, including controlling NRRP funds.

In this sense, the "PIAF-IT" (Integrated Anti-Fraud Platform) project – approved by OLAF as part of the "Hercule III" programme for technical assistance in the fight against fraud in the European Union – has set up an institutional collaboration between COLAF and the RGS-MEF to develop a "Business Intelligence" platform to counter fraud. According to the latest COLAF Report (2020, published at the end of 2021), the project is currently being implemented. The platform will be a fundamental tool supporting COLAF's coordination activities in the fight against fraud affecting the EU's financial interests.

The PIAF-IT data sources that have already been integrated are: the Revenue Agency tax registry, the Infocamere Business register, Digital Accounting Justice – GIUDICO, the National Court of Auditors Irregularities and Fraud Information System – SIDIF, the RGS-MEF Central Unified Database (BDU), the Direct Management EU funds and the European Commission Financial Transparency System – FTS. The next release will be the Ministry of Justice Criminal Records Database This will make it possible to view the final judgments regarding companies and individuals, providing an additional risk assessment tool. The PIAF will check for final judgments, also including individuals such as directors, shareholders, and holders of other offices within the company. Integration of the ORBIS system is currently under evaluation.

PIAF-IT will also be available for NRRP monitoring and control. In particular, thanks to the integration of BDU, PIAF-IT makes it possible to check whether those involved have received indirect and shared-management EU funds in the past and compare the data with those concerning the NRRP. PIAF-IT also retrieves information relating to the controls carried out by the Audit Authorities on funded projects, allowing operators to verify the results.

However, PIAF-IT's role in monitoring the NRRP should be better disseminated. In particular: how will the information stored in PIAF-IT be used? Which institutional actors will perform controls based on this platform under the responsibility of COLAF? Will it be the Guardia di Finanza and the MEF, coordinated by COLAF? Will the Re.Gi.s system be integrated too?

G) Communication between national and European databases needs to be evaluated better.

The MEF reports to the European Commission, and OLAF (like the EPPO and ECA) should also play a role in controlling how EU funding is spent, but there is still uncertainty as to how this should technically come about. For the moment, it seems that, notwithstanding information available through Re.gi.s, which will be accessible to different European and National authorities with control functions, the single information system does not offer a service comparable to that of the Irregularity Management System (IMS). Furthermore, no information is available on the mechanisms through which the Re.Gi.s. information system and the ministerial Si.ge.co. could also be linked to or feed the IMS of the European Commission itself, which comes under the responsibility of COLAF in the Italian case. In the past, COLAF evaluated the possibility of adapting the IMS platform to monitor other kind of funds, such as direct funds (*Linee guida sulle modalità di comunicazione alla Commissione europea delle irregolarità e frodi a danno del bilancio europeo*, here, 2019, 36) with OLAF. The IMS platform system has also been used by regional authorities when acting as management bodies under the EFSIs, while now they only act as mainly intermediate/implementing authorities (*soggetti attuatori*) under the NRRP, when relevant.

Recently (2021), some developments have been put in place regarding the functioning of the IMS. For example, the RRF will be added to the IMS so that it can be used to report RRF

irregularities. A feature is also being developed to upload cases showing irregularities directly from a national database to the IMS (without processing IMS data manually; see here).

It should be evaluated whether the experiences with early-warning communications on the IMS platform could also be of value to managing and implementing authorities in countering irregularities and fraud in the NRRP context. The IMS platform allows both reporting irregularities or fraud and the so-called PACA practices – the "premier acte de constat administratif ou judiciaire" – as first acts of judicial investigation. Communication between Re.Gi.s. and the IMS – including through the ministerial Si.ge.co, and expanding operability of the IMS platform to the recovery fund – could create a flow of information from the local to the supranational level to protect the EU's financial interest, especially in terms of external and ex-post controls. It should be noted, in fact, that at the moment, the entire NRRP implementation system focuses, in terms of management control, on self-evaluation. In the Italian case, moreover, integrating these platforms or administrative procedures could valorise the experience acquired by managing institutions in the past with EFSI and the CAP, especially thanks to "internal" and *in itinere* controls, overlapped with Si.ge.co, from which communication of irregularities and fraud stem (later subject to specific external control, for example by OLAF).

Unfortunately, as observed in the COLAF Report 2020 (p. 41), at the moment, a clear prevalence of "ex-post controls" is observed (69%) in Italy. As in the past, these are the main ways of detecting irregularities in the use of EU funds in the country. Notwithstanding the EU choice in favour of the "direct management" option for the Recovery and Resilience facility (RRF), EU Member States are the beneficiaries, and their internal system of controls inevitably matters greatly. Thus, it is important, on the one hand, to verify the functioning of self-evaluation within administrations and not brush aside its weaknesses (see below for internal and decentralised forms of control), and, on the other hand, to share the best practices of the national and regional authorities within the EFSI control cycle (because, even though the management system is different, the risk of frauds and irregularities and the attitude in face them are part of the institutional system).

In addition, it must be observed that, for the RRF, the European Commission has not yet implemented a single RRF monitoring and controlling IT system (Corti-Núñez Ferrer, 2021, here). On the contrary, except for the potential of ARACHNE (see below for more details) and the appointment of a Scoreboard (see EU recommendations but also the recent MEF Circular no. 26/2022, here, on the passage between Re.Gi.s and the European Commission FENIX platform), Member States will collect and store this information on the national level. While the EU institutions will have access to these data on request, the efficiency of such a two-tier structure remains to be tested in practice and will depend on smooth cooperation between the national and EU levels (see for this opinion Arwidi-Kreith, here, 2021).

According to the COLAF Report 2020, there are intrinsic limits within the IMS system itself, especially in relation to the difficulty of accurately surveying all possible cases of irregularities and or fraud. It is thus necessary to improve the definition of early-warning communications and PACA, even through legislation, rather than mere inter-ministerial circulars (as has been the case until now in 2007 and 2008, see BETKOSOL D1, Italy; see also the above mentioned *Linee guida*, 2019).

Moreover, any merging of databases should take into account the specific features of the RRF, such as the provisions in art. 22, Regulation (EU) 2021/241 and especially the case of "serious irregularity", or the *sui generis* centralised model of management (Arwidi-Kreith, here, 2021. See also the EU level BETKOSOL recommendations). In fact, under the IMS procedure, irregularity occurs when the corresponding amounts are – even if only potentially – capable of harming the European budget, namely, when they have been included in a "certification of expenditure" sent to the European Commission by each certifying authority. In terms of the NRRP, payment requests are sent exclusively by the NRRP central unit and, in theory, only the latter is competent to directly communicate with the Commission; this is also true of the anti-fraud strategy.

Another specificity, in which the IMS platform logic differs from that of the Re.Gi.s. system, is the definition of "economic operator", referring to the subjects that have to be monitored in order to safeguard the EU's financial interests. In fact, as specified in the above-mentioned Guidelines, 2019 (p. 15), an economic operator is anyone involved in implementing an initiative financed by EU funds,

with the exception of Member States exercising their public law prerogatives. However, in the case of the RRF, the Member States themselves are the direct beneficiaries, whereas a beneficiary under direct management is usually a natural person or entity, including private companies. Compared to other programmes under direct management, the RRF is considered a *sui generis* version of direct management (Arwidi-Kreith, here, 2021) and will probably need *ad hoc* solutions.

H) The traceability of public investments through the CUP system must be specified better in the light of the NRRP and especially in the case of resources being allocated among central managing administrations and other public implementing administrations.

CUP is a univocal project number and ensures the overall traceability of public investments and contributes to interoperability among databanks.

It may be useful to remember, as Stefani Castellani (EPPO) reported during the BETKOSOL closing conference (round table, May 27th 2022), how useful the CUP system is for the EPPO in its role in the NGEU. It is a requirement that a project must meet if it is to qualify for NRR funding. The number is assigned by a public authority according to the class of financing channel established by the NRRP.

Despite the recent reforms and specifications (see above), some further recommendations are needed, considering the specificity and variance of the term "investment project" under the NRRP. For example, concerning acts that identify the assignments of resources to other "public" implementing authorities, it is necessary to:

A. identify the subsequent act with which the resources will be assigned to the initiatives;
B. request a CUP;
C. specify that subsequent requests for funding already have the CUP, especially if specific selection methods are envisaged (Annex to MEF Circular no. 9/2021, p. 75: *Istruzioni tecniche per la selezione dei progetti PNRR*).

An example would be an administration responsible for targets and milestones (such as a ministry) which, for various reasons, has to assign resources to several other public implementing authorities (e.g., local authorities or universities), which will then have to select specific projects to fund. This includes "grants" for public administrations, which did not previously require a CUP (CUP Faq, available here). According to the current instructions, it is not the responsibility of *amministrazioni titolari* to deal with acquiring a CUP. **It is thus recommended that the master-subordinate CUP system scheme for the management of complex investments under the NRRP be adopted between "*soggetti titolari*" and "*soggetti attuatori*" (public or private but with public functions), so as to evidence the existence of links between different public investment projects (*CUP Manuale utente, CUP user Manual*, p. 7) or to evaluate the possibility of adopting the standard CUP "templates" as a guide for the implementing authorities and thus foster the comparability of data.**

2.4.3 Risk-oriented controls

Concerning the risk of NRRP-related fraud, each control and audit level will use the Arachne information system and any additional risk analysis systems and tools based on the sampling of expenses/projects to be subjected to control. This will allow controls and audits to be directed towards projects, contracts, contractors, and beneficiaries potentially more exposed to the risk of fraud, monitor the risk of fraud in projects/implementing bodies, and support preliminary and verification activities to carry out any preliminary analysis and/or specific investigations.

Italy has previously had problems reforming its system of controls from the perspective of a risk-oriented model (see BETKOSOL D.1, Italy). This means that the Arachne tool is doubly

advantageous. At the EU level, the more the tool is adopted to monitor recovery plans nationally, the more comparable data will be available for the European Commission, thus facilitating its task (but see EU Level recommendation). On the national level, it will help the controlling system become risk-oriented, exploiting the efforts in the EU funds sector to acquire more expertise on the general playground. It may be interesting at this point to remember that COLAF has recently observed that the ability to detect irregularities by means of a thorough preventive analysis is fundamental and contributes to the effectiveness and efficiency of the system for the EU budget protection system. However, the data elaborated by the Committee show that "routine verification" continues to be the method that provides the greatest number of reports of irregularities and or fraud (2020 COLAF Report, p. 42).

- Specific recommendations:

I) Wide-spread introduction of risk-oriented controls. Arachne must be adopted at all institutional levels.

2.5 Recommendations concerning ordinary internal and first level controls for managing EU funds: institutional coordination, administrative capacity, and the specific situation of the local sector, especially in the light of the NRRP

2.5.1 Public management and skills in the light of the NRRP

It is the responsibility of central administrations to implement individual initiatives (art. 8, Decree Law no. 77/2021).

However, central administrations may delegate part or all of the functions assigned to them to other administrations on the basis of their institutional competences, through specific protocols or agreements (public-public agreements) or other administrative arrangements provided for by current legislation. To this end, the MEF provides a specific basic format to be supplemented or modified based on the need to reach an agreement between public administrations for NRRP-related purposes. It should be remembered that if functions are delegated, the operating costs/technical assistance associated with the delegated functions are not recognised as NRRP resources (see Annex 1, technical instructions, MEF Circular no. 9/2022, 18).

As already mentioned, thus, the initiatives are implemented using existing structures and procedures, and all administrations must operate through their own ordinary administrative management structure, also using structures dedicated to implementing programmes and/or projects financed by other European or national resources, without any further organisational burden. For each mission or component, every central administration responsible for the relevant measures provides general supervision of the effective implementation of the investment/reform within its competence and progress towards achieving the related targets and milestones. For this purpose, as we have seen, a coordination structure/unit is identified at each central administration responsible for taking measures (see the Technical Annex to the NRRP, 4).

This coordination structure, which can be organised into units or offices, is based on the central administration organisational model and constitutes the contact point of the central administration for implementing the NRRP and performs the following functions: to control implementation of the projects relating to the measures and, specifically, the procedures underway and their progress in terms of financial and physical progress, thus providing support at all stages of implementation and monitoring the achievement of targets and milestones; self-control, in particular with regard to the correct achievement of the targets and milestones of the relevant measure, and, lastly, the financial management and reporting of expenses, targets, and milestones connected with the relevant measures.

MEF Circular no. 9/2022 invites the central administrations in charge of NRRP initiatives to define and adopt their own management and control systems (Si.ge.co.) by, and no later than, February 2022, in line with the indications provided by the annex to the Circular. They must also pass on the relevant documentation to the Central Service for the NRRP. The technical guidelines attached to this circular state that the Si.Ge.Co. working within each central administration responsible for initiatives implementing the NRRP must operate using methods based on the management and control systems of the EFSIs (MEF Circular no. 9/2022, p. 20).

The National Court of Auditors (NCA) has recently reported that there are difficulties in filling executive positions in these special units. In essence, these are delays in selecting managers to head the technical coordination structures affected in the coverage of the internal branches too. There are, however, particularly acute situations where the technical structures still have no management. All executive positions are covered in only seven cases. As for recruitment methods, new hires were made in 40% of cases, while the remaining posts were filled by internal staff. It therefore appears essential to recover the delays accumulated in the process of conferring managerial positions in order to avoid prolonged organisational difficulties translating into an obstacle to the progress of NRRP initiatives, in particular in the administrations responsible for several important initiatives (see the NCA Report on implementing the NRRP, March 2022, here, 90).

Thus, the following recommendations stem from an awareness that the system is suffering from the overall lack of adequately staffed senior management in the public sector.

- Specific recommendation:

J) Skilled human resources already working in central administrations should not only be involved in the ministerial NRRP special units but also in implementing NRRP investments and EFSI management

The Technical Annex to the NRRP states that the staff assigned to the coordination structures within central administrations have the necessary skills to carry out the functions required by EU regulations. These structures, in fact, already carry out similar activities for development policies.

However, if these HRs are dedicated to NRRP coordination structures, there will be a lack of human resources in the “ordinary” departments that have to implement the NRRP reforms/projects (both as *soggetti titolari* that have to coordinate different *soggetti attuatori*, or as implementing actors) and/or manage EFSIs.

Indeed, a distinction must be drawn between controlling/reporting skills and reforming/acting know-how, as the success of investments depends mostly on the latter.

It may be observed that existing skills in planning reforms and especially in implementing investments under European projects are less replaceable than controlling skills, especially if the NRRP is on the table. This is true because, even though there are similarities with cohesion policies, skills in reporting/controlling under the NRRP legal framework are also quite new and different (perhaps simpler), for example, in terms of the performance required and the evaluation of results, which may require the acquisition of new competences. **Hence, previous competences relating to development policies should partly be kept where they are and can partly be valorised in the context of “active” administration to implement the NRRP rather than mainly deputing these figures to first-level control functions under the NRRP’s Si.ge.co.**

In other words, the effects of bogging the majority of the existing human resources with high levels of competence in European project management down in the technicalities of implementing the NRRP must be taken into consideration.

In addition, assistance to the special NRRP units within each ministry may come from the Central Audit Body in the context of the relevant System audits; hence, with the support of the Central Service for the NRRP that in fact defines and approves the procedures to be adopted for sampling and

extracting the projects to be subjected to verification in specific guidelines (e.g. sampling methods and extraction criteria, the factors to be considered in the risk analysis, and IT systems and tools to be integrated to improve controls relating to the projects or subjects most exposed to the risk of fraud, conflicts of interest, and double financing; see MEF Circular no. 9, especially p. 50 ff.).

On the other hand, ordinary ministerial offices, which have to design the contents and procedures for specific investments, can largely count on their own capacities. It is true that there is a new *ex ante* control mentioned above, to be carried out by the MEF-RGS, and it is also true that each ministerial NRRP special unit can support the other offices in drawing up acts/calls for tenders in order to fulfil NRRP requirements, but in the first case it is not clear what the MEF will contribute in terms of scrutinising ministerial acts (a mere formal control or something more in terms of merits assessment?) and, in the second case, the special unit works alone, while there may be any number of ordinary offices responsible for investments connected with the NRRP.

More internal coordination would be desirable.

2.5.2 A self-evaluation system: horizontal and vertical coordination in the light of the NRRP's Si.ge.co

The Technical Annex to the NRRP requires the administrations responsible for implementing the NRRP (*soggetti titolari* and soggetti *attuatori*) to ensure the complete traceability of operations and keep separate accounts concerning the use of NRRP resources. They keep all the documents and the related supporting documentation on computer files and make them available for control and auditing duties. Contracts and expenditure are subject to ordinary lawfulness assessment and the administrative-accounting checks required by the applicable national law (Legislative Decree no. 286/1999 and four types of internal control, especially the internal control of administrative and accounting conformity and management control; there is also a reference to Legislative Decree no. 123/2011, pursuant to art. 49, Law n. 196/2009; see BETKOSOL D1 on these points).

- Specific recommendations:

K) Adjustments are needed to carry out the control of performance by managing institutions with regard to institutions implementing the NRRP compatible with the ordinary functioning of internal and external controls.

Within this framework, it appears that central administrations responsible for implementing the NRRP, working in parallel with the NRRP Si.ge.cos, have to guarantee proper functioning of their internal control systems. However, if a Ministry has to guarantee good performance regarding targets and milestones – but many of its tasks depend on other actors, including other public administrations (regions, local authorities, universities, etc.) – the central administration responsible will need to control the activities of other autonomous actors, surreptitiously introducing new external controls not envisaged in the constitutional framework through its own internal control system and NRRP Si.ge.co.

It is doubtful whether this system can really ensure practical control. For example, can monitoring through data flow be sufficient? Is all the necessary information fully specified in decrees or tendering calls for individual measures adopted by central administrations?

Considering the short time available and the February 2022 deadline for appointing ministerial Si.ge.cos, it seems unlikely that all the central administrations have been able to specify all the pertinent information in the acts adopted to enable the transfer/assignment of NRRP resources (concerning milestones for T1-2022, for example) especially in the initial phase of implementing the NRRP.

It is therefore recommended that ex-post adjustments be introduced.

L) To avoid duplications and foster coordination, internal controls and NRRP special unit controls must be coordinated.

Responsibilities concerning control functions need to be established by the central administrations responsible for the NRRP; more specifically, **the tasks of NRRP special units or offices in charge of the NRPP Si.ge.co. in each ministry ought to be coordinated with those of the internal structures (such as accounting offices) responsible for internal controls.**

In addition, some harmonisation/coordination/integration needs to be introduced between the EFSIs and the NRRP Si.ge.cos, considering that managing the relevant dataflow for the NRRP and data interoperability are both built upon previous cohesion policy experience.

M) Details and guidelines on the withdrawal and recovery of unduly spent resources must be provided well in advance.

The importance of the issues mentioned above is also evident if we consider the "recovery phase", especially vis-à-vis private implementing actors and final beneficiaries (even though problems can also arise in the event of mismanagement by public implementing entities).

The Technical Annex to the NRRP specifies that the administrations responsible for measures are also responsible for the recovery and return of resources improperly used or subjected to fraud or double public funding. Reporting and recording irregularities and fraud, as well as any irregular sums detected, will be guaranteed through the use of dedicated information systems (see above for Re.gi.s). In addition, the Central NRRP Service establishes a specific working group called "Network of NRRP anti-fraud contacts" comprising an anti-fraud contact person with the MEF-Central Service for the NRRP (acting as presiding body), plus at least one member who will work as the "anti-fraud contact person" for each central administration responsible for initiatives and, lastly, members from the Fiscal Police (see above for more details).

The NRRP Anti-Fraud Contact Network is responsible for carrying out regular analysis and assessment of fraud risks in order to establish any actions to be taken. However, the ability to detect irregularities and fraud and to collect data on them through digital systems does not guarantee the same ability to effectively recover unduly assigned resources.

Despite the MEF Decree of 1st October, 2021 addressing the issue (art. 8), there is no specific mention of this particular point, although the NCA previously stated that the topic was particularly problematic, albeit in relation to other kinds of resources (see BETKOSOL D1). Enormous obstacles and difficulties regarding recovery in the event of withdrawals can also affect the good functioning of the control phase. **It is therefore recommended that the Central NRRP Service provide details and guidelines well in advance, especially by taking into account that withdrawals and recoveries are solutions of last resort: it is in the interest of the State and the EU that the NRRP fully achieve its objectives.**

According to art. 10(6) (on implementing procedures for the NRRP) of Decree Law no. 121/2021 "Nel caso in cui si renda necessario procedere al recupero di somme nei confronti di regioni, province autonome di Trento e di Bolzano e degli enti locali, si applicano le procedure di cui al comma 7-bis dell'articolo 1 del decreto-legge 6 maggio 2021, n. 59, convertito, con modificazioni, dalla legge 1° luglio 2021, n.101". Art. 1(7-bis), Decree Law no. 59/2021 establishes the following system for the recovery phase (see the 2021 NCA Report, here, pp. 159 ff.):

- For local authorities, the procedure provides active or passive transfer of resources in favour of the State budget, and if local authorities do not actively fulfil this obligation, they will receive fewer resources in the future.
- A similar mechanism is in place for the regional governments.

It is also specified that any failure to achieve intermediate targets and milestones, with annexed recovery of funds, must be verified. However, only relationships between certain implementing authorities and managing authorities are regulated, while provisions for recovery from other kinds of implementing authorities or final beneficiaries are still lacking (universities, public companies, private parties, etc.). What the norm seeks to guarantee is the availability of resources for

the State budget, but no mention is made of the concrete difficulties for local or regional budgets, or for carrying out recoveries on the territory.

Despite the MEF Decree 1st October 2021 specifically addressing this issue (art. 8), nothing further is said, even though the NCA previously mentioned that the topic is being particularly problematic for other kinds of resources too (see BETKOSOL D1).

Obstacles and difficulties to carrying out recoveries in the event of withdrawal can also affect the good functioning of the control phase. It is recommended that details and guidelines be provided well in advance, especially from the Central NRRP Service, bearing in mind that withdrawals and recoveries are solutions of last resort: it is in the interest of the State and the EU that an NRRP would fully achieve its objectives.

It is also important to observe that the system appointed for financial flows concerning the NRRP normally requires a cash advance of ten per cent from the managing authorities, while the other sums are transferred according to a process similar to an accrual system. This should, at least in theory, reduce the risk of disbursing public money before some regularity or performance-based controls have been carried out. However, this system also raises problems for implementing authorities in terms of cash-flow. These conditions exacerbate still further the pressure on regional, local, or decentralised institutions.

2.5.3 The NRRP's public implementing authorities: efficiency in public recruitment and clarity regarding top-down steering powers

As for implementing administrations (*soggetti attuatori*), it is first of all necessary to assess their ability to implement the reforms and make investments. Secondly, it is important to assess whether their internal controls and the transmission of information to central administrations through the dataflow that feeds the central administration's NRRP Si.ge.co and Re.gi.s, are sufficient to ensure good and correct performance. These problems are particularly serious in municipalities, considering that they benefit from the most NRRP resources (almost 70 billion, see the Openpolis report, source: Parliamentary Budgetary Office). Their main problems include HRs, financial capacity, and public accounting expertise, especially in the South, where 40 per cent of the new resources are to be spent. This means the wide range of technical assistance tools and improved technical-administrative capacity of the territorial authorities will have to be available soon.

According to art. 9(2), Decree Law no. 77/2021, central administrations, regions, the autonomous districts of Trento and Bolzano, and the local authorities can use the technical-operational support of companies with mainly State-controlled companies, and, state, regional, and local and supervised entities to ensure the effective and timely award of NRRP funds.

Steps to improve administration:

According to the 2022 NCA Report on the NRRP, the recent introduction of the dedicated technical coordination committee for technical assistance is moving in the right direction. In fact, MEF Circular no. 6/2022 envisages a series of actions to empower the administration in terms of technical assistance and operational support for deploying NRRP projects, which will benefit the central administrations in charge of NRRP initiatives and the territorial administrations responsible for implementing individual projects. To cover the need for technical assistance – whose costs are ineligible for NRRP funding – Department of State General Accounting (RGS) has entered into a specific Agreement with Cassa Depositi e Prestiti S.p.A. (CdP). Additional memoranda of understanding have been signed with Invitalia S.p.a. and Sogei S.p.a.

It should also be noted that art. 33, Decree Law no. 152/2021 provides for a joint task force for the coordination of the recovery and resilience initiatives between the State, the local regions and the Autonomous Provinces of Trento and Bolzano, known as the *State-Regions PNRR Core*. Despite the name, this body, operating within the Regional Affairs Department of the Presidency of the Council of Ministers, offers support to local authorities, among its different tasks.

Concerning human resources, thanks to the "recruitment" decrees, administrations can draw on the NRRP to cover the costs of recruiting personnel specifically needed to carry out the projects they own directly. They may be hired on fixed-term contracts or through collaborative assignments (art. 1, Decree Law no. 80/2021. The decrees were simplified when they were converted into Law in the light of some recommendations coming from ANCI, the National Association of Municipalities).

"Recruitment" decrees:

In particular, under the new provisions, the original preventive authorisation for all personnel costs included in the "economic frameworks" that the central administration responsible for the NRRP previously required of local authorities has been removed. A special Circular of the Ministry of Economy and Finance (MEF-RGS Circular no. 4/2022) establishes the methods, conditions and criteria the administrations concerned must apply to be able to claim the personnel costs to be reported in the relative economic framework of the NRRP. Therefore, only the admissibility of additional personnel expenses to be covered by the NRRP, other than those included in the abovementioned economic frameworks are subject to prior verification by the central administrations responsible for the NRRP, again according to the methods specified in MEF-RGS circular no. 4/2022. Then, art. 31-bis of Decree Law no. 152/2021 extended the financial constraints to flexible working so that municipalities can hire people with fixed term contracts on their own budgetary resources. Lastly, Art. 1 (562) of the 2022 Budget Law (Law no. 234/2021) has excluded the cost of the necessary fixed-term recruitment to the Metropolitan Cities so that the projects envisaged in the NRRP can be implemented respecting the spending limits set by art. 33, Decree Law no. 34/2019 and art. 1(557 ff), Law no. 296/2006. It is important to emphasise that these measures are complementary to each other, so any personnel needs that cannot be financed using the investments made with NRRP resources and the methods set out in MEF-RGS Circular no. 4/2022, not being accountable for to the European Union, can still be satisfied by drawing on the additional financial spaces granted to the Municipalities by Decree Law no. 152/2021 (see the ANCI report here, 26 ff.).
See, recently, the adoption of the Decree Law no. 36/2022, still not converted into Law (especially arts. 1-17).

- Specific recommendations:

N) Recruitment procedures and training must foster the development and consolidation of specialised skills

From an interview with the *Direttore della direzione regionale audit FESR, FSE e controllo interno*, Lazio Region, BETKOSOL Databook D4:

"[...] local administrations are not always able to report clearly. This often stems from the complexity of reporting procedures and the **lack of suitable staff** to carry them out. For example, professional training courses, local authorities and administrations are not equipped to report correctly".

"It is necessary **to give public employees more training on the control procedures relating to European funds** and to implement the Financial Information Units in each public administration. Increased knowledge in all administrations will facilitate action to protect financial interests [...]".

Also from the interview with the *Direttore Dipartimento Progetti di Sviluppo e Finanziamenti Europei*, City of Rome, BETKOSOL D4 Databook:

"Italian institutions, including the Department of Development Projects and European Financing of Roma Capitale, **need to be equipped with more administrative staff both from a quantitative and qualitative point of view.** We need **administrations with more skills and human resources to manage and control European funds.** It is **not always necessary to turn to external service** providers in this sector; it is **necessary to strengthen the existing offices**. This will ensure that the Italian administration meets the standards required by European Institutions".

As observed above, Italy has already adopted some new provisions to have more civil servants and to train them. However, there have not been sufficient incentives to attract high-skilled workers, especially in terms of the duration of the contracts and their remuneration. **Work must be done to understand how to improve the efficiency of public recruitment, especially with regard to the need for specialised workers and their stabilisation and internalisation in the public sector. Internal expertise in the Public sector can also reduce the risk of irregularities and, above all, conflicts of interest.**

O) Public administrations need to develop and consolidate planning skills.

Among the previous difficulties with EFSIs in the southern regions is the lack of spending capacity, with a serious risk of arriving at the end of the period having committed to allocate a large number of resources all together, with the annexed risk of irregularities and fraud (see BETKOSOL D1). The risk seems lower in the case of the NRRP because of the speed of the overall procedure, the tightness of the agenda and the reimbursement logic (see below).

However, some of the drawbacks to the South's spending capacity in this new scenario (programming capacity and project management culture) are due to the pressing schedule. As observed in the NCA's first Report on the NRRP (2022), administrative difficulties are particularly accentuated among the local authorities, especially in the South, and especially when there are numerous NRRP calls (such as in December, 2021), with particularly stringent time slots for participation (on average about two months).

It is therefore suggested that national authorities responsible for handling NRRP investments should thoroughly evaluate well in advance and *in itinere* the time necessary for the entire process (with its various steps) to achieve final targets and milestones, especially when adopting a general act assigning resources for later implementation by other implementing authorities or actors (e.g., municipalities, universities, enterprises). The more delays are accumulated at the top (even respecting the deadlines set by the operation arrangements), the less time is available at the bottom of the institutional chain, where normally administrative skills are weaker and practical issues have to be solved.

It is also recommended to coordinate different measures (or schedule them to avoid too many calls at any one time), both within the responsible administrations themselves and with others, possibly under the central service of the NRRP, especially when the targets of beneficiaries are involved.

2.5.4 NRRP public implementing authorities: effects of the NRRP on the system of controls in the local sector

In terms of financial capacity and public accounting rules, with its Judgment no. 115/2020, the Constitutional Court had already emphasised that the financial crises of the (*local*) institutions are not always attributable to maladministration but are in some cases a consequence of the economic and social difficulties of the territory and that where the financial difficulties are not attributable to management deficiencies, the State must intervene with financial aid rather than through accounting "tricks" that seek only to postpone the problem and not to solve it.

Something has been done regarding this issue in the light of the NRRP. For example, according to art. 15 of Decree Law no. 77/2021, among other things, local authorities can use the resources received to implement the NRRP and the National Complementary Plan (NCP) which, at the end of the year, converge in the budget surplus in derogation of the financial limits set out in the 2019 Annual Budget (Law no. 145/2018), adopted according to a public accounting stabilisation logic.

The same art. 15 also envisages that local authorities can ascertain the income resulting from the NRRP and National Complementary Plan based on the formal resolution of allocation or assignment of the contribution in their favour without having to wait for a commitment by the granting administration (see also art. 3, MEF decree of October 11th, 2021 on financial management).

- Specific recommendation:

P) The system of controls applicable to local governments needs to be clarified in the light of the NRRP

Up until now, EU resources have been considered extra-budgetary resources at the national and regional-local levels.

Extra-budgetary resources:

At national level, the administrations have always had the duty to ascertain that the management of these extra-budgetary resources (included EU resources) is authorised by special laws and coordinated with the budget (this point is also recalled in art. 10 of the MEF Decree of October 11th, 2021). The main controls over extra budget resources therefore concern the use of resources and, more precisely, reporting materials (the final balance sheet and annual report) provided by the managing body or entity (see literature in D1, in particular D'Alterio, 2015, 145 ff.). Consequently, there have been no traditional checks on the adoption of forecast provisions establishing the use of resources, as they are not subject to the normal procedures of general public accounting (e.g., the absence of accounting controls and preventive legality controls). As for the local sector, checks on the financial balances of regions and local authorities have been particularly stringent over the last few decades because of national spending review requirements and the need to balance public accounts despite the Constitutional reforms of 2001 introducing fiscal autonomy. Indeed, the checks on administrative and accounting legitimacy include – especially for local authorities – debt analysis, compliance with the internal stability pact, and financial balance in managing certain funds (see the literature in D1, especially D'Alterio, 2015, 95 ff.).

Derogation to the general public accounting discipline at the local level is even more problematic when it comes to the NRRP, where the Si.ge.co. is mainly used by central administrations rather than the Regions, which are institutionally closer to the local authorities. Instead, in the case of the EFSIs, Regions have often been management authorities able to develop their Si.ge.co. according to special and detailed EU regulations. This has led the managing and implementing public administrations to employ, and orient, the entire system of internal controls to the benefit of the Si.ge.co. system in which they are involved (see BETKOSOL D1, Italy on this point).

NRRP rules are entirely based on the logic of performance. Moreover, for the purposes of expenditures accounting and reporting, administrations and parties responsible for implementation can use the "simplified cost options", that stresses even more the performance-based approach, envisaged under article 52 ff of Regulation (EU) 2021/1060. European Commission reimbursement will be linked to the actual achievement of targets (quantitative results) and milestones (qualitative or procedural indicators).

References to the application of ordinary controls and rules (i.e., in Art. 9(2), MEF Decree of October 11th, 2021) create ambiguities and do not clarify which controls should be effectively applied. In fact, the performance approach under the NRRP could reduce the role of documental accounting practices on which the general administrative controls are based (the so-called *controllo di regolarità amministrativo-contabile*), especially in the event of simplified cost options under Art. 53, Regulation 2021/1060, more easily managed and controlled by central administrations (*soggetti titolari*) and therefore preferable. In addition, if they are considered extra-budgetary funds, funds are not subject to ordinary public accounting and public budget controls. Lastly, Si.ge.co. are only available to ministries, which do not have a strong grasp on the control of the territory.

Thus, the overlap between extra-budgetary regulations, the centralisation of governance, performance-based logic, and references to the application of ordinary controls and rules (starting from Regulation EU 241/2021) create an opaque scenario in terms of controlling functions.

Considering that reforms to the local accounting rules are also expected (some examples have been mentioned above), it is time to **clarify how new "external" controls by *amministrazioni titolari*, such as those referred to in recommendation M) above, should be run for NRRP resources managed by local authorities, balancing simplification in terms of time and procedures. It is necessary to:**

1) **simulate the set of controls that local authorities will run in relation to NRRP resources, also in view of external controls carried out along the institutional chain from the role of accounting auditors to that of territorial accounting offices and the NCA's regional public prosecutor offices;**
2) **consider whether these controls are sufficient to avoid irregularities and frauds, taking into account the Si.ge.co. of the central administrations responsible for implementing the NRRP**
3) **consider whether these resources must continue to be covered by the rules for extra-budget resources as at the central level. If so, what are the consequences of this choice on the administrative control system and the basis of the specificity of the NRRP as a *sui generis* EU fund. If not, as envisaged – considering that current indications are that NRRP income in the local budget must be registered as ministerial money transfers – it is important to give adequate publicity to relevant MEF circulars on the public accounting rules applicable to NRRP funds, making sure they are intelligible.**

It should be recalled, again, that resources unduly spent will become part of the recovery circuit and will have a negative effect on the local and central administrations responsible for NRRP initiatives and, consequently, on the national budget, also affecting national financial interests.

2.6 Recommendations concerning communication and transparency issues for the implementation of the NRRP

Based on the findings of the previous chapters and the results of the final conference, the following recommendations briefly bring together some elements regarding the need for greater transparency and participation in terms of NRRP management and control.

Q) It is important to respect the principle of transparency in adopting ministerial Si.ge.cos. Once adopted, they should be easily available and accessible to the interested parties.

R) EU institutional indications relating to national ones should be more accessible.

For example, as may be seen here, in the third phase of OLAF's involvement in the RRF ("exchange of information"), OLAF played an active role in developing and participating in 'Operation Sentinel', an important part of sharing information on fraud-related issues with partners. OLAF was in regular contact with Member States to help support and protect their national plans via technical anti-fraud meetings with AFCOS or through more bilateral discussions with national authorities. During these meetings, the RRF was always on the agenda and will continue to be so in the future. During this period, OLAF reached out to different actors, sharing best practices and seeing what could be improved. Now that the several RRF plans are being implemented and the funds start flowing into the member states, OLAF will undertake its regular anti-fraud work according to its existing mandate and tools.

S) More updated information is needed on developments for IT tools and data interoperability to monitor and control EU funds (for example, on the development of Re.gi.s and PIAF-IT in the ItaliaDomani website).

Section II

The criminal law recommendations

Prof. Maurizio Bellacosa, Dr Emanuele Birritteri, Dr Rossella Sabia

2.7 Criminal law recommendations

2.7.1 Regulations and organisation: the state of the art

These recommendations are based on the study carried out in the context of the previous BETKOSOL deliverables (BETKOSOL D1, D2 and D4).

Even before Directive (EU) 2017/1731, the criminalisation obligations imposed by that harmonisation act – and before the Directive by the so-called PIF Convention – were, in principle, already met by the Italian criminal law system. Additionally, it should be pointed out that Italian law provides for offences which, in some cases, have a broader scope than that defined by the minimum standards of the Directive (EU) 2017/1731, thus ensuring greater protection of the interests at stake (for details, examples, and literature review see BETKOSOL D1 – Task 4, section III, Italy; see also the various interviews from BETKOSOL D4 with Italian and European authorities). The data collected from the qualitative interviews also confirm a conclusion that had already been reached in the previous phases of this research, namely that the criminal measures to fight fraud affecting EU's financial interests in Italy (as well as in many other jurisdictions) are generally not differentiated according to the European or national origin of the resources.

Indeed, after entry into force of the 2017 Directive, the Italian legislator, in particular through Legislative Decree no. 75/2020, made only a few adjustments, the legislative framework being, as mentioned, already substantially compliant with the criminal provisions of the Directive (see BETKOSOL D1 – Task 4, section IV –). However, the Italian legislator has, to some extent, taken a "mechanical" approach to transposing the Directive, e.g., by increasing the penalties laid down for certain offences, or by providing that certain crimes can trigger corporate criminal liability only where

they can be considered contrary to the Union's financial interests (see BETKOSOL D1 – Task 4, sections IV and V).

Moreover, in the Italian legal system, a number of innovative non-criminal tools for fighting crime (for example in the Antimafia Code – Legislative Decree no. 159 of 2011) are in place, also with respect to fraud affecting national and EU financial interests. These measures make it possible to prevent the criminal infiltration of the legal economy and the public procurement sector, thus ensuring a holistic approach in the fight against economic crime – i.e., through the use of both the traditional tools of the criminal justice system and effective non-criminal preventive instruments, such as anti-mafia preventive confiscation, anti-mafia interdiction measures, and the judicial administration and control of companies (for details see BETKOSOL D1 – Task 4, section III, Italy). It is also worth mentioning that at the end of 2021, in the context of the implementation of the Italian NRRP (Decree Law no. 152/2021), the Italian legislator bet on these types of non-criminal tools of cooperative compliance, introducing new "collaborative prevention" (art. 94-bis of the Anti-mafia Code). Collaborative prevention provides the Prefect (a local public authority) with the possibility to issue an order alternative to anti-mafia interdiction, allowing the company – if the criminal infiltration of the business is only "sporadic" (i.e., not at an advanced stage) – to keep working with public administrations, but under a period of public monitoring and subjected to the obligation to comply with specific duties (e.g., to implement a corporate compliance program).

To sum up, the Italian legislator has built a modern enforcement system adopting instruments that – operating alongside the "traditional" criminal ones – can prevent crimes (also against national and EU financial interests), thus reasonably balancing two opposite needs: on the one hand, to fight crime, and on the other hand, to keep companies only occasionally infiltrated by criminals "alive". This is a key strategy, especially in the Next Generation EU era, as the country needs to rely on the private sector's capacity to obtain and effectively use the public resources generated by the plan.

Italy has also met all the EU requirements set out in the EPPO Regulation, in particular in establishing its national structures for the European Delegated Prosecutors' action.

2.7.2 Risk assessment

As noted above, protection of the EU's financial interests in Italy is at a higher level than the minimum requirements set by the PIF Directive. Therefore, one of the main issues is not so much introducing new crimes, but rather to assess whether it is necessary to rationalise the existing criminal regulatory framework, providing better coordination between a number of overlapping figures (see BETKOSOL D1, Task 4 for more details). Another possible problem is linked to the fact that, as mentioned in the previous paragraph, in some (albeit few) cases, Italian law provides for stricter regulation for certain crimes affecting the EU's financial interests compared to those affecting national interests.

Consequently, as discussed in the previous phases of this research (see BETKOSOL D1, Task 4), there may be a risk of legitimising – in some ways and at least in some cases – a "reverse" violation of the assimilation principle, ensuring greater protection of the EU's financial interests than national ones in a rationale out of line with the principle of equality.

From a different standpoint, with regard to the latest amendments to the Anti-Mafia Code in the context of implementing the National Recovery and Resilience Plan (Decree Law no. 152/2021), a possible emerging pitfall may be the coordination between the work of the administrative authority (the Prefect – a local public authority) and the judicial authority (the Court responsible for enforcing prevention measures). At present, these two authorities apply very similar instruments of cooperative compliance against companies, also as a means of countering crime affecting the EU's financial interests. There is, therefore, a risk that these measures may overlap, each limiting the scope of application of the other.

Lastly, concerning the relationship between the EPPO and the Italian criminal enforcement authorities (public prosecutors), a key issue could be the potential extension of the competence of the European Public Prosecutor's Office's to organised crime (offences "inextricably linked" to those

affecting the EU's financial interests – see art. 22(3), Council Regulation (EU) 2017/1939), in respect of which highly specialised prosecutors may investigate in Italy. These possible conflicts of jurisdiction would be particularly problematic in view of the "sensitive" role that specialised anti-mafia prosecutors play in Italy. and considering the complexity of the Italian law enforcement system vis-à-vis organised crime.

2.7.3 Recommendations

T) In the Italian criminal justice system, enforcement mechanisms for the protection of the EU's financial interests could be rationalised with respect to the few cases where this might be appropriate, by, for example, also harmonising preventive and punitive measures to protect European and national funds

To avoid any kind of "reverse" violation of the assimilation principle, the few cases in Italy where the criminal protection of EU funds is currently stricter than that of national funds could be amended so that the instruments applicable for all frauds affecting public financial interests are always the same (regardless of the origin of the funds).

Where necessary, better coordination between certain overlapping offences (e.g., assessing whether it would be appropriate to reduce the various cases of "special fraud") and between preventive cooperative compliance measures by the administrative and judicial authorities (e.g., assessing whether it would be appropriate to entrust the competence to apply these measures to a single authority) should also be ensured.

U) Cooperation and coordination between the EPPO and national prosecutors should always be fostered and ensured, in particular in matters of organised crime investigations

To avoid complicated conflicts of competence, particularly in organised crime proceedings, the possible extension of the EPPO's jurisdiction to organised crime offences "inextricably linked" to those affecting the EU's financial interests should be activated cautiously. Cooperation between EPPO and the Italian national specialised anti-mafia prosecutors should be enhanced through preventive coordination, considering the specificity of the Italian legal system in this field.

Part III

Recommendations for the Polish case

Part III

Recommendations for the Polish case study

Prof. Maciej Serowaniec

3.1. Institutional coordination and local involvement to favour the proper use of EU funds

Programming and managing financial resources from the European Union budget is a special public task due to the importance of the effective use of these resources for the country's economic development, the need to involve many public institutions, and the need to cooperate between the central and regional governments. It is a matter of ensuring effective politically impartial professional programming and managing financial resources from the EU budget. It is no less important to enable better cooperation between the government and the regional administrations in implementing this task, which aims to realise the principles of the cooperation of authorities and subsidiarity expressed in the introduction to the Constitution of the Republic of Poland.

3.1.1. Regulation and organisation: the *status quo*

The way European funds are distributed is currently handled by the Ministry of Funds and Regional Policy, which coordinates the funds allocated within the Partnership Agreements adopted during negotiations. In addition, there are 16 regional programmes managed by Marshal Offices. This system raises concerns, as there are numerous allegations that the allocating of some funds (in the form of rewards and penalties for specific entities and institutions) is discretionary. There is also a frequent accusation that the current distribution system supports political subordination – especially, but not only, at the regional level. This results in a dual system. The regional and governmental levels are taken into account, but they only involve some of the regional programmes. Such actions increase costs and reduce the effectiveness of the entire system.

The experience of recent years indicates that the existing institutional model based on the dominant position of central government administration meets these objectives only to a limited extent. It should be stressed that although self-government authorities participate in this task and bear responsibility for Regional Operational Programmes, their experience and potential are employed only to a limited extent. The literature on the subject increasingly stresses that cooperation between the government and the local authorities should cover this unique public task in its entirety. An additional argument in favour of the search for new optimal institutional forms is the special challenge of the 2021-2027 budget agenda, and the programming and management of additional financial resources of the European Union from the Recovery Package after COVID-19. The experience of the fight against the pandemic speaks in favour of synergy between the central and regional governments, because only cooperation, and not mutual competition, between these two divisions of State administration can guarantee the efficient functioning of the State under all conditions (BETKOSOL D1, Task 1, 3).

3.1.2. Risk evaluation

In accordance with the model adopted in Poland, the management of EU funds is based on a decentralised system of programming and implementation using a multi-level management structure. The adopted model complies with the recommendations of the Committee of the Regions. However, this does not mean it is ideal (Wójtowicz-Dawid (2020), LEX/el.). Analysis of its functioning indicates many shortcomings resulting from the essence of decentralisation, such as, for example, the multiplicity of documents, guidelines, and regulations adopted by individual managing or intermediate

institutions (Czempas/Smykała (2012), p. 20-30). In some cases, we find guidelines for a given programme containing procedural solutions which beneficiaries are obliged to apply, but these differ from the guidelines created and issued by other institutions. This happens despite each of the entities responsible for implementing and using the funds basing their guidelines on one shared set of general rules, often included in horizontal guidelines. For example, in the last programming period (2014-2020), each regional managing authority develops guidelines for its programme. Comparison of several of these has led us to the conclusion that, depending on the institution, different procedural solutions, or those related to imposing obligations on beneficiaries in terms of project implementation, are applied in similar situations. This causes general confusion among the beneficiaries and a feeling of procedural disorder and that the rules related to the implementation and use of EU funds are particularly complicated (BETKOSOL D4, 3.2).

The model adopted in Poland, where practically all the decision-making power is concentrated in the hands of the government administration, also gives rise, on the one hand, to accusations of partiality in the allocation and distribution of funds and, on the other, that regional authorities often do not feel fully responsible for the effective implementation of these measures. This is a counterproductive approach as it is the experience and involvement of the regional governments that guarantees effective implementation of the tasks set – especially regarding funds made available under national programmes.

This thesis is confirmed by persistent problems with timely spending of funds. By 2020, Poland had committed 90% of the allocated funds. However, only 50% had been spent, placing Poland in the EU average regarding funds spent, but slightly below the average of funds allocated (the EU average is 97%). While these figures place Poland within the EU average, this is a visible decrease compared with the 2007-2013 perspective, when 67.86% of the funds were absorbed in Poland by the end of 2013 (Kowalski (2021), p. 5).

The basic problem is also the lack of effective consultation procedures in preparing assumptions for national projects. Social organisations, territorial self-governments, entrepreneurs' organisations, representatives of academic and opinion-forming circles and civil society point out that the consultation procedures are a façade and do not lead to the development of compromise solutions, considering the postulates formulated by social partners. When analysing the Polish reality, it is often stressed that the social-institutional dimension is one of the key barriers to the country's coherent and integrated socio-economic development.

3.1.3 Recommendations

A) Setting up the Agency for Cohesion and Development

In order to ensure the effective and politically unbiased programming and management of financial resources from the EU budget, we recommend setting up a new agency which would take over the current role and tasks of the Ministry of Funds and Regional Policy. It would become a forum for cooperation between government administration, local self-government, and social and economic partners. The basis for introducing this reform may be the draft of the Agency for Cohesion and Development Act produced by the Polish Senate (Senate Print no. 320). The draft act (modelled on Italian and French solutions) assumes that the Cohesion and Development Agency would perform the tasks of the managing institution referred to in the provisions of the general regulation concerning European Union funds. The Agency's tasks would include preparing proposals for project selection criteria; complying with the provisions of the general regulation; selecting projects for funding; concluding the project funding agreements with applicants or deciding whether to fund the project; ordering payments; acting as the certifying authority; controlling implementation of the operational programme, including the verification of the correctness of expenditures incurred by the beneficiaries; imposing financial corrections; recovering amounts to be repaid, in particular amounts relating to the imposition of financial corrections; evaluating the operational programme; monitoring progress in the implementation of the operational programme, and providing information on, and promoting, it. The Agency's tasks would also include giving opinions on draft normative acts drawn up by public

authorities concerning European Union funds or relating to them; giving opinions on positions taken by Poland in European Union bodies concerning European Union funds; cooperation with institutions forming the system of development institutions or giving opinions on draft national operational and regional operational programmes.

In the light of the draft under review, the Council of the Cohesion and Development Agency will be the body responsible for ensuring "balance" between the representatives of the government and local authorities. It will also be responsible for implementing the partnership principle. The draft assumes the Council's work will involve:

1. nine representatives of the government (ministers in charge of regional development, public administration, public finance, economy, climate, the environment), as well as other persons indicated by the Prime Minister (the number of other persons indicated by the Prime Minister must remain mobile due to the flexible number of ministers heading the departments)
2. nine members who will be selected by the regional and local authorities side of the Joint Commission of Government and Local Self-Government bodies
3. one person each to be indicated by the Speaker of the Sejm, the Speaker of the Senate, the President of the Republic of Poland, the employees' side of the Social Dialogue Council and the employers' side of the Social Dialogue Council (5 persons in total).

The draft assumes that the Council of the Cohesion and Development Agency will have two co-chairs: the minister responsible for regional development, and a person indicated by the Regional Government side of the Joint Commission of Government and Local Self-Government bodies. Introducing these statutory solutions may provide a positive impulse for increased cooperation between the national government and regional/local administrations in managing and auditing the disbursement of EU funds.

3.2. Effective mechanisms for cooperation between national audit institutions

Upon joining the European Union, Poland assumed the obligation to combat fraud affecting the Union's common financial interests (Article 325 TfUE). This entailed an obligation to adapt Polish law to the new economic, social, and economic reality. Amendments included, in particular, the Public Finance Act and the Fiscal Control Act. In fulfilling its obligation to combat fraud affecting the interests of the Union, Poland therefore applies the same measures as it applies when combating fraud affecting its own interests. The equal importance of protecting national and EU financial interests was particularly emphasised in the Public Finance Act of 27 August 2009. In the light of the provisions of the Public Finance Act, it is the duty of each body in charge of public expenditure to oversee protection of the EU's financial interests. Poland's protection of these interests is currently performed at various levels.

3.2.1. Regulation and organisation: the *status quo*

In the context of protecting the financial interests of the European Union, the reform of the fiscal administration that took place in Poland in 2017 was very important. The National Fiscal Administration (hereinafter: KAS), taking over fiscal and customs administration, as well as fiscal control powers, has become the institution mainly responsible for the correct implementation of State revenues and funds constituting EU revenues. The Head of KAS also performs the function of Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the European Union.

The institutions involved in managing operational programmes, in particular the managing authorities and the audit authority, play the most important role in protecting the financial interests of the Union as regards expenditure. The Prosecutor's Office, the Police, the Internal Security Agency, and the Central Anti-Corruption Bureau, among others, are involved in combating offences against the financial interests of the European Union. Proceedings for infringing public finance rules are

conducted by adjudicating commissions and the Main Commissioner for Public Finance Regulation. Ordinary courts and administrative courts exercise control over the correctness of the actions taken by individual institutions and those taken by the beneficiaries of EU funds. All activities protecting the Union's financial interests are subject to evaluation by the supreme State control authority – the Supreme Audit Office (BETKOSOL D1, Task 4).

Poland belongs to the group of countries which, in recent years, have detected and reported the largest number and most substantial irregularities and cases of fraud to the detriment of the EU to the European Commission. The high number and value of reported irregularities is related, on the one hand, to the fact that Poland is one of the major beneficiaries of EU funds in Europe. On the other hand, it is also closely related to the effectiveness of actions taken by institutions involved in protecting the EU's financial interests.

3.2.2. Risk evaluation

The institutional system related to monitoring, control, and audit of the funds coming from the EU budget, which by definition is supposed to meet the functional requirements defined by the European Union, despite the impression of meeting them, seems to be a complex structure, with an ambiguous division of tasks and roles, overlapping control and audit functions, with several gaps related to the verification and control of certain scopes. Therefore, although institutionally they serve to secure the proper spending of EU funds, they do not fully allow for effective management of processes related to the use of structural funds (see among others Ministry of Investment and Development, answer 1, BETKOSOL D4 Databook; Supreme Audit Office, answer 1, BETKOSOL D4 Databook; Regional Chamber of Audit in Bydgoszcz, answer 1, BETKOSOL D4 Databook). This is additionally compounded by the multi-level nature of the whole system and the lack of communication between bodies/institutions responsible for control or audit, including communication on the purposefulness of actions taken and results obtained. Furthermore, the lack of information flow between institutions responsible for control, monitoring, and audit prevents the ongoing assessment of the tasks performed in the context of the implementation of improvements, which at the same time limits the effectiveness and sensibility of the solutions adopted (Wójtowicz-Dawid (2020), LEX/el.).

Although the KAS reform has improved the effectiveness of fiscal administration, it has not eliminated competition between particular structures in the area of implementing control tasks. Individual control institutions continue to use locally developed applications that facilitate the performance of their employees' tasks; however, they are not suited to the exchange of data between individual offices. Due to the lack of coordination mechanisms that would allow, among other things, the exchange of information on the results of already completed control procedures, situations arise in which control institutions duplicate their activities. 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 the controls performed. The respondents also drew attention to the benefits of developing uniform control standards within all the control institutions (Supreme Audit Office, answer 3, D4 Databook BETKOSOL; Regional Chamber of Audit in Bydgoszcz, answer 3, BETKOSOL D4 Databook). According to some respondents, it would also be worthwhile to consider extending the existing audit criteria. Currently, in the vast majority of cases, legality remains the only audit criterion. However, this is an anachronistic approach that does not consider international standards and recommendations regarding auditing. It is therefore worth formulating recommendations concerning the extension of audit criteria to include efficiency (Regional Chamber of Audit in Bydgoszcz, answer 4, D3 BETKOSOL Databook).

3.2.3. Recommendations

B) Creating a national strategy to combat fraud to the detriment of EU financial interests

As a first step, it is worth considering work on creating a national strategy to combat fraud to the detriment of the EU's financial interests (Sendrowski (2019), LEX/el.). Although such strategies are developed by Managing Authorities for individual operational programmes, they are a kind of political declaration that boils down to statements such as 'zero tolerance for fraud' and providing information on the possibility of reporting fraud anonymously. Instead, the suggested solution in this type of situation is a "declaration of impartiality". Without devaluing the fraud strategies adopted within the framework of the operational programmes, it should be requested that work be undertaken to create a uniform strategy based on an analysis of the abuses identified in the past and defining areas of particular risk. A well-prepared strategy could help the fiscal and operational programme of implementation-control staff. The introduction of the strategy should be combined with ongoing training and information campaigns addressed to the public. Anti-fraud information activities could be linked to the national strategy and the whistleblower protection directive, adopted in 2017. Government Anti-Corruption Programme 2018-2020 should be considered the correct course of action. At the same time, introducing a strategy to fight corruption and other abuses to the detriment of EU financial interests should be advocated.

C) Improving the professional qualifications of the staff of auditing institutions

In addition to its undoubted achievements in tightening the VAT system, the reform of the tax, customs, and fiscal control administration carried out in 2017 has at the same time highlighted areas where additional measures are necessary. Surveys have highlighted equipment shortages in offices, the lack of appropriate training systems, and the lack of incentives for employees to improve their qualifications. Considering the wide range of activities carried out by individual control bodies in connection with the protection of the Union's financial interests, it is very important, on the one hand, to equip these structures with modern IT systems facilitating the collection and analysis of the data held, and, on the other, to provide appropriate education and substantive preparation of the staff. For this reason, in the functioning system of the protection of the EU's financial interests, it is necessary to ensure an effective training system for the employees of the customs and fiscal apparatus, with particular emphasis on the issues related to the protection of the financial interests of the European Union. A solution to some of the problems related to the level of education and awareness of the employees of the fiscal apparatus may be the introduction of an appropriate system of post-graduate studies in the National Treasury School, which operates within the KAS structure.

D) Improving cooperation between audit institutions

Furthermore, in order to improving cooperation between audit institutions, i.e. managing institutions, intermediate bodies, implementing institutions and also the minister in charge of regional development, it would be worth adding to the statutory regulation a provision specifying the rules for implementing tasks financed from European funds, according to which these institutions exchange, upon request, not only information about controls that have been carried out and their results, but also post-control information and control documentation. In this respect, it would be helpful to introduce applications adjusted for the exchange of data between individual offices (Chociej (2020), p. 306-310). Increasing cooperation between audit institutions should also be accompanied by a process of extending the existing audit criteria. In addition to legality, assessment of the effectiveness of the actions taken should also become a basic and permanent audit criterion. However, new legislation needs to be created if such a change is to be implemented (Walenia (2018)) .

E) Bolstering the coordinating role of the Government Plenipotentiary for Combatting Financial Irregularities against Poland and the EU

It would also be desirable to see changes in the way information about irregularities and fraud to the detriment of the EU's financial interests is analysed by the Government Plenipotentiary for Combatting Financial Irregularities against Poland and the EU. The Plenipotentiary has a wide range

of competencies, which he does not fully use. In particular, the Plenipotentiary carries out only a limited analysis of irregularities and fraud to the detriment of the Union's financial interests identified by individual institutions. The information he receives about irregularities and fraud is merely passed on to the European Commission. It would appear that detailed analyses of irregularities and fraud is a prerequisite for rational activity both in the field of law making and in terms of initiating and coordinating joint action by national institutions involved in protecting the Union's financial interests (Chociej (2018, p. 160-161). The lack of analyses of fraudulent activities and analyses of risk areas significantly hinders effective action to combat fraud. A proposal should be made for the Government Plenipotentiary for Combatting Fraud against Poland and the EU to prepare reports of this kind on significant irregularities, which would be presented to the Polish authorities managing and auditing EU funds. Researchers also call for the functions of the Government Plenipotentiary to be separated from the functions of the Head of the KAS, which would allow for better coordination of actions undertaken by the KAS and other institutions involved in protecting the financial interests of the EU (Chociej (2020), p. 315-319).

3.3 The legal nature of the guidelines concerning the operational programmes financed using EU funds

Control procedures for the disbursement of EU funds are based on legal provisions, applicable guidelines, and the provisions of the grant contract. Therefore, the scope of control mainly covers the examination of the operation's compliance with the system of EU law and ensuring the legality and regularity of the operations undertaken and the correctness of the expenditure declared for financing.

3.3.1. Regulation and organisation: the *status quo*

The issue of ascertaining irregularities in the implementation of projects co-financed through EU funds is extremely complicated, causing far-reaching doubts regarding the application of the law (Tempińska (2021), LEX/el).

The main reason for this state of affairs is the incomprehensible and constantly changing regulations and procedures for corrective action by authorised institutions. It should also be emphasised that the system for ascertaining the occurrence of irregularities is not uniform. Also many authorities' competences are regulated by acts that do not have the force of universally binding law (see The Solidarity Trade Union, answer 3, BETKOSOL D4 Databook).

Imposing sanctions on beneficiaries in the form of reimbursement of a EU grant or unilaterally reducing eligible expenditure based on ministerial guidelines or other documents not included in the catalogue of sources of universally binding law may raise justified doubts about the constitutionality of this system (Poździk (2014), p. 4-11). This is reflected in the Constitutional Tribunal Judgment of 12 December 2011, which admittedly referred mainly to the appeal procedure, but the consequences also impinge on the issue of the authorities' conduct in the event of irregularities (ref. no. P 1/1, Journal of Law 2011 no. 279 item. 1644). The Constitutional Tribunal expressed reservations regarding the possibility of regulating the rights and obligations of project applicants in acts that are not universally binding. In the opinion of the Constitutional Tribunal, neither the uniform practice of administrative bodies, nor the consistent jurisprudence of administrative courts may replace direct regulation of the rights and obligations of beneficiaries directly through a law. Omission of this issue in the Act on Development Policy was treated as a violation of the principle of citizens' trust in the State and the law it creates. Another issue was the principle of correct legislation (Krzykowski (2013), p. 15-18). Implementing this judgment required a systemic legislative initiative consisting in the standardisation, through acts of universally binding law, of all the existing elements of the implementation systems, which directly concern the rights and obligations of the participants in calls carried out under regional operational programmes. However, as yet, this judgment has not been fully implemented.

Analysis of binding legal regulations also leads to the conclusion that, based on acts that are not universally binding, the Managing Authority (hereinafter: the Authority) of a given operational programme has been equipped with competences and obliged by the legislator to undertake various factual and legal actions aimed at controlling and ascertaining the occurrence of irregularities in the disbursement of EU funds, and consequently, the efficient and effective recovery of funds improperly disbursed from the EU budget (BETKOSOL D1, Task 3). In activities such as these, there is also frequent interpenetration and contact between civil and administrative law provisions (Krzykowski (2013), p. 191-208).

3.2.2. Risk evaluation

Audit mechanisms for the disbursement of EU funds are regulated by several legal acts. Their provisions often lead to discrepancies and difficulties in establishing project eligibility criteria, among other things. The problem of ascertaining irregularities in the implementation of projects co-financed from EU funds has thus become a very complicated topic, causing far-reaching doubts in the application of the law (Cieślak (2015), p. 6-22).

A shortcoming of the whole system is that the measures are based on guidelines that are not a system of universally binding law. The legislator has not defined what the guidelines are, what legal form they should take, or what their content should look like. The scope of statutory regulation is limited to indicating the entity authorised to issue guidelines, their material scope, and the basic elements of the procedure for their issue (Podkowik (2012), p. 69-86). It can be illustrated by the example of the procedure of imposing a public obligation of a fiscal nature in the form of the reimbursement of public funds, such as those of a EU subsidy that has been granted, or the unilateral reduction of eligible expenditure based on ministerial guidelines or other documents that do not fall within the catalogue of sources of universally binding law.

The multiplicity of guidelines issued by various managing institutions, the lack of standardisation of activities, and the lack of standardisation of the documents prepared introduce general chaos and a feeling of incoherence. In addition, this feeling of poor coordination is exacerbated by the fact that the activities of individual institutions are based on the examination of legality, expediency, compliance with guidelines, and regulations, with total disregard for effectiveness and efficiency (Supreme Audit Office, answer 3, BETKOSOL D4 Databook).

The conclusion that arises in the context of the above regulation is that the mechanism of stating irregularities, which in fact results in the obligation to return the grant, and seeking reimbursement of the grant, is complicated, and the regulation is dispersed over many acts of universally binding law, as well as soft law documents, such as the guidelines referred to (Tempińska (2021), LEX/el. 2021).

3.3.3. Recommendations

F) The legally binding nature of the guidelines concerning operational programmes financed by EU funds

The implementation of this postulate will require a systemic initiative by the legislator, consisting in standardising, though acts of universally binding law, all the existing elements of control systems that directly concern the rights and obligations of beneficiaries. It should be clearly emphasised that only in some cases will it be necessary to apply the form of a statute (cf. for example, article 31(3) and article 78 of the Constitution). Nevertheless, it cannot be excluded *a priori* that regulating certain elements of the implementation of development policy may also come about through other acts of universally binding law (e.g., regulations or acts of local aw).

Regulating the powers of inspection will also require particular care in guaranteeing the legality of the actions of this body. This is particularly important in view of the differences that characterise civil and administrative-legal relations.

3.4. Poland's commitment to the work of the European Public Prosecutor's Office

The European Public Prosecutor's Office is an independent EU body competent to investigate and prosecute offences affecting the Union's financial interests, such as fraud, corruption and cross-border VAT fraud exceeding €10 million. To this end, the European Public Prosecutor's Office must investigate, prosecute, and act as an accuser before the competent courts of the Member States. Up to now, only national authorities have been able to prosecute fraud against the EU budget, such as misuse of EU funds or cross-border tax fraud. However, their jurisdiction does not extend beyond national borders.

3.4.1 Regulation and organisation: the *status quo*

Poland refused to join the European Public Prosecutor's Office. The Polish authorities' objections to the European Public Prosecutor's Office included its proposed powers to combat VAT fraud. Polish diplomats argued that this was the province of Member States, and that the effectiveness of the European Public Prosecutor's Office would add little value in this matter. The current Government is guided by its convictions regarding the primacy of domestic policy over foreign policy. The assumption is not explicitly stated, but this regularity can be seen in the sphere of declarations and specific actions. The need for deep-running changes, especially in the institutional sphere, makes the current Government unwilling to consider its objectives, the previously undertaken legal and institutional commitments, and the opinions of its foreign partners, or to adjust to their expectations. To put it simply, there are now too many solutions unfavourable to Poland and prejudicial to the independence of Polish national bodies fighting crime against the EU's 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 maximum 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 orders.

3.4.2. Risk evaluation

In 2018, EU countries lost around €140 billion in VAT revenue due to cross-border fraud. Figures for 2020 could be even higher due to the impact of the Covid-19 pandemic on the EU economy. EU countries also reported that around €638 million EU structural funds were misused in 2015. Compared with other Member States, Poland has always been regarded as one of the countries that effectively counteract irregularities in the spending of funds. This makes the decision of the Council of Ministers not to join this initiative all the more inexplicable.

Before the creation of the European Public Prosecutor's Office, only national authorities dealt with crimes against EU finances. However, their powers are limited as they do not reach across borders. In contrast, EU bodies that dealt with these cases before the creation of the European Public Prosecutor's Office, such as the European Anti-Fraud Office (OLAF), the European Union Agency for the Cooperation of Law Enforcement Agencies (Europol), and the European Union Agency for Criminal Justice Cooperation (Eurojust) – cannot initiate criminal proceedings or bring and support prosecutions in the Member States. The European Public Prosecutor's Office aims to remedy these shortcomings and end crimes against the EU budget. However, the effectiveness of the Public Prosecutor's Office will depend on the introduction of appropriate regulations and active cooperation with its officers at the national level. Therefore, it is important to involve all EU Member States in this initiative.

The lack of involvement in the EPPO of all the EU Member States, including Poland, poses several significant problems for the functioning of this institution. On the one hand, attention should be drawn to aspects of the EPPO's cooperation with OLAF, which will have different competencies in countries participating in the EPPO and those that have not undertaken enhanced cooperation. On the other hand, the procedure for investigating cross-border offences where the offence takes place in one of the countries not participating in the EPPO may pose problems. As a side note, it is also worth remarking that the non-involvement by Poland and Hungary in the work of the European Public Prosecutor's Office has become one of the reasons for the creation of regulations binding payments to the rule of law. The "money for the rule of law" regulation allows funds to be cut in the event of rule of law violations with a "sufficiently direct impact on the management of EU funds and the protection of Union interests" (or such a "serious risk").

3.4.3. Recommendations

G) Poland's commitment to the work of the European Public Prosecutor's Office

The smooth functioning of the European Public Prosecutor's Office (EPPO) is important for filling a gap in the protection of EU finances and for strengthening cooperation between national prosecutors' offices. However, the effectiveness of the EPPO will depend on the introduction of appropriate regulations and active cooperation with its officers at the national level. Therefore, it is important to involve all Member States, including Poland, in cooperation within the EPPO. Because of this, we formulate a recommendation for Poland to become fully involved in the work of the EPPO as soon as possible, perhaps by establishing formal cooperation based on working arrangements. In practice, this will be necessary because the activities of the EPPO may also cover the Polish territory (e.g., in the case of cross-border crimes) and Polish citizens (e.g., if they commit a crime against EU finances on the territory of a state participating in enhanced cooperation) (Chociej (2020), p. 153-157).

Part IV

Recommendations for the Belgian case

Part IV

Recommendations for the Belgian case

4.1 Restrictive reporting practice in fraud-related matters

Dr Eva Kiel (formerly Rulands)

4.1.1. Risk evaluation

The qualitative interview revealed that in Belgium – as in Germany – irregularities in disbursement practices are based less on fraudulent intentions than on misinformation (Flemish Agency for Innovation and Entrepreneurship, BETKOSOL D4 Databook, answer 7.c). Starting points for gaps in protection in substantive and/or procedural law could not be identified during the research. However, a certain reluctance on the part of the auditors could be observed regarding the definition of fraud. Suspicion of fraud automatically obliges auditors to report to the Public Prosecutor's Office (article 29 of the Code of Criminal Procedure), which is why there is fear of political consequences (Flemish Audit Authority, BETKOSOL D4 Databook, answer 7.c). This administrative practice represents a high potential risk for the EU's financial interests. The audit authority is crucial in identifying criminogenic behaviour in shared management. The lack of confidence in the integrity of legal policy instruments means that legal reporting obligations hamper the protection of the EU's financial interests. Since subsidy offences are so-called "victimless crimes", law enforcement authorities can usually only become aware of a crime through State channels. Against this background, statutory reporting obligations assume a key function in the efficient prosecution of criminal offences. However, a restrictive reporting practice does not only lead to losses in terms of repression; the type and number of reports are also an indicator of a changing risk structure, as high reports indicate changes in the risk structure and protection gaps in the existing administrative and control systems. In the absence of adjustments in administrative practice, this also affects the effectiveness of crime prevention.

4.1.2. Recommendations

A) Increasing the trust of auditors in the integrity of the political and legal system by eliminating the fear of reprisals and political consequences on the part of administrative personnel

Considering the above remarks on risk evaluation, there is urgent need for action. The first step should be to strengthen the confidence of the auditors in the integrity of the political and legal system by removing the fear of political reprisals and consequences on the part of administrative personnel. It is proposed to generate more precise findings on the reasons for the restrictive reporting practice beforehand by setting up anonymous information channels. This is because concrete countermeasures can only be taken if the initial situation is clear. However, training courses in which the importance of the reporting obligations for the protection of national and EU financial interests are explained will certainly be helpful. They only exist at a very low level.

B) Define clear guidelines for the reporting obligation, setting concrete "thresholds of occasion" for the individual characteristics of the relevant crimes

In this context, clear guidelines should also be defined for the initiative of the reporting obligation by setting concrete "thresholds for the occasion" for the individual characteristics of relevant offences.

C) Ultimately, a legislative solution is also conceivable through which consequences under employment law are implemented in the event of a violation of statutory reporting obligations

This exists in general as potential disciplinary measures can be undertaken against the public servant given his/her lack of loyalty, but the application of this possibility remains very limited.

4.2. The relationship between the Belgian legal system and the EPPO: how to relocate an EPPO case from one Member State to another?

Dr Alessandro Nato

This recommendation is focused on the Belgian legal framework, but it may be useful for other Member States with a similar legal system, in particular France, Luxembourg, and Spain (Claes, Werding, Franssen, 2021, 360). Indeed, this recommendation aims, on the one hand, to stimulate a reflection process among Member States on whether their legal system meets the requirements of the EPPO Regulation. On the other hand, it intends to evaluate some of the recent changes brought by the Belgian legislator to implement the EPPO in the national legal order. Furthermore, recommendation aims to provide solutions to one of the problems facing the EPPO highlighted by the interview with the EPPO prosecutor found in BETKOSOL D4. In other words, the EPPO must solve the problem linked to cooperation between national and European authorities. In fact, the EPPO is called upon to operate according to different procedural rules in each Member State due to the absence of a European Code of Criminal Procedure and a European judiciary police force providing a common framework for the procedural rules applicable to the EPPO investigative activity. Recommendation will be based on analysis of the Belgian legal framework and EU law, BETKOSOL D1, D2, and, especially, the literature review.

4.2.1. Regulation and organisation: the *status quo*

EPPO Regulation (EU) 2017/1939 does not prohibit Belgian judicial inquiry in EPPO cases. Nevertheless, there is a particular situation where the rules of the EPPO conflict with Belgian law. It concerns the relocation of an EPPO case from one Member State to another (Claes, Werding, Franssen, 2021, 378).

In article 26(5), EPPO Regulation (EU) 2017/1939 states that "until a decision to prosecute is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to: (a) reallocate the case to a European Delegated Prosecutor in another Member State; (b) merge or split cases and, for each case choose the European Delegated Prosecutor handling it, if such decisions are in the general interest of justice and in accordance with the criteria for the choice of the handling European Delegated Prosecutor". In other words, since the EPPO Regulation (EU) 2017/1939 does not distinguish between a preliminary and a judicial inquiry, the Permanent Chamber must be able to relocate a case in both situations until a final decision on referral for trial has been made (Claes, Werding, Franssen, 2021, 378). EPPO Regulation (EU) 2017/1939 consequently obliges Member States to allow a public prosecutor to remove a case from an investigating judge or pre-trial court, even if those judges do not agree. This raises the question of whether a prosecutor should be able to withdraw a case pending before a judge and overturn the latter's decision. In principle, judges are independent in their decisions and cannot be obliged to carry out the orders or decisions of the public prosecutor. Such a situation has not yet been regulated under Belgian law.

4.2.2. Risk evaluation

Within the Belgian legal framework, there are some situations where the prosecutor's office can decide on the outcome of the criminal proceedings, despite the case being pending before a judge.

The Belgian public prosecutor's office can conclude an out-of-court settlement with the suspect during the judicial inquiry and thereby terminate the criminal proceedings (Article 216-bis, paragraph 2, CIC), but this agreement is subject to judicial review. Certainly, the pre-trial court will check whether different conditions – including the proportionality of the agreement in the light of the seriousness of the facts and the suspect's personality – are fulfilled, and if so, approve the agreement (Claes, Werding, Franssen, 2021, 378). Furthermore, the public prosecutor office can also request the pre-trial court to remove the investigating judge from the case in certain specific cases (art. 235 CIC). Moreover, if several investigating judges think they are competent to conduct investigation, there are different ways to dismiss one investigating judge in favour of another (Beernaert, Bosly, Vandermeersch, 2017, 624-628). According to procedure, Belgian rules and, in case of a conflict, the Belgian Court of Cassation decides which investigating judge can continue the inquiry (Article 525 CIC).

In practice, this procedure has proved to be too unwieldy and therefore rarely applied. The literature suggests a different solution, which has been worked out in practice: the informal dismissal of an investigating judge by the preliminary court after consulting the prosecutors concerned. Also, it suggests that this informal procedure could also be used to reassign the case to a European Delegated Prosecutor in another Member State (Claes, Werding, Franssen, 2021, 378). The problems remain of how the EPPO can relocate a case in favour of a European Delegated Prosecutor in another Member State if the pre-trial tribunal does not agree with the decision of the EPPO. Now, a Belgian Public Prosecutor's office cannot force a pre-trial tribunal to approve its decision. Since an overall reform of Belgian criminal procedure is in the making, it is undesirable to make major adjustments at this point. Nevertheless, reallocation must be possible because of the primacy of EU law.

4.2.3. Recommendations

D) The Belgian legislator needs to design a new procedure to relocate cases involving the EPPO from Belgium to another Member State

The literature suggests drawing up a new procedure based on the existing procedure for reallocating cases to international criminal tribunals. Indeed, International Criminal Tribunals (for example, the International Criminal Tribunal for the Former Yugoslavia (ICTY); Kerr, 2004; Calvetti, Scovazzi, 2007; Calvetti, Scovazzi, 2004, Cassese, Chiavario, De Francesco, 2005), except for the International Criminal Court (ICCP), have primacy over the Belgian courts and other national courts that are part of their jurisdictions. (Claes, Werding, Franssen, 2021, 379).

The Belgian law concerning cooperation with the International Criminal Court and international criminal tribunals rules on the disposal of the Belgian jurisdiction which "lorsqu'une demande de dessaisissement des juridictions nationales est formulée par le Tribunal à propos d'un fait relevant de sa compétence, la Cour de cassation, sur réquisition du procureur général, et après audition de la personne intéressée, prononce le dessaisissement de la juridiction belge saisie du même fait, après avoir vérifié qu'il n'y a pas erreur sur la personne" (art. 47 Loi concernant la coopération avec la Cour pénale internationale et les tribunaux pénaux internationaux, 29 mars 2004). Moreover, the law on cooperation emphasises that "l'arrêt de dessaisissement empêche la poursuite de la procédure en Belgique, sans préjudice de l'application de l'article 49 de la présente loi. Le dessaisissement ne fait pas obstacle au droit de la partie civile de demander réparation. L'exercice de ce droit est suspendu tant que l'affaire est pendante devant le Tribunal" (art. 48 Loi concernant la coopération avec la Cour

pénale internationale et les tribunaux pénaux internationaux, 29 mars 2004). Also, the law on cooperation with International Criminal Court adds that "lorsque le Tribunal fait savoir, après dessaisissement de la juridiction belge, que le Procureur a décidé de ne pas établir d'acte d'accusation, que le Tribunal ne l'a pas confirmé, ou que le Tribunal s'est déclaré incompétent, la Cour de cassation, sur réquisition du procureur général, et après audition de la personne intéressée, règle la procédure et, s'il y a lieu, prononce le renvoi devant la cour, le tribunal ou la juridiction d'instruction compétents" (art. 49 Loi concernant la coopération avec la Cour pénale internationale et les tribunaux pénaux internationaux, 29 mars 2004).

In other words, if the prosecutor of an international criminal tribunal gives notice that he wishes to prosecute facts subject to a judicial inquiry in Belgium, the Court of Cassation will withdraw the case from the pre-trial judges after verifying that the facts fall within the competence of the tribunal and that no error was made regarding the person concerned (Claes, Werding, Franssen, 2021, 380). This verification does not involve an assessment of the possible charges. Furthermore, after the withdrawal, prosecution in Belgium is no longer possible, unless the international tribunal has not delivered an indictment, or the procedure is inadmissible. The Belgian legislator could create a similar procedure for relocating cases involving the EPPO from Belgium to another Member State. Under this procedure, the pre-trial tribunal and Court would be obliged to confirm the withdrawal decision of the Permanente Chamber of the EPPO after a formal check of the material competence of the EPPO and the criteria for, or withdrawal of, article 26, paragraph 5, of the EPPO Regulation. This way, the legislator would prevent the Permanent Chamber withdrawing cases without the initiative of a judge and would ensure the protection of the suspect's right to a "natural judge", which is part of the right to a fair trial, while also respecting the decision of the Permanent Chamber, as intended by the EU legislator (Claes, Werding, Franssen, 2021, 380).

4.3. The relationship between the Belgian legal system and the EPPO: how to close an EPPO investigation in Belgium?

Dr Alessandro Nato

This recommendation is closely related to the previous one. Furthermore, like the previus recommendation, this recommendation focuses on the Belgian legal framework but may be useful for other Member States with a similar legal system, notably France, Luxembourg, and Spain (Claes, Werding, Franssen, , 2021, 360). Indeed, the recommendation also aims, on the one hand, to stimulate the reflection process among Member States on whether their legal system meets the requirements of the EPPO regulation. On the other hand, this recommendation seeks to evaluate some of the changes recently made by the Belgian legislator to transpose the EPPO into national law. Like the previous recommendation, recommendation aims to provide solutions to one of the problems facing the EPPO, as evidenced by the interview with the EPPO prosecutor contained in BETKOSOL D4. In other words, the EPPO must solve the problem of cooperation between national and European authorities. In fact, the EPPO is called upon to operate with different procedural rules in each Member State due to the absence of a European Code of Criminal Procedure and a European judiciary police force, which provides a common framework for the applicable procedural rules and the investigative activity of the EPPO. Recommendation will be based on analysis of the Belgian legal framework and EU law, BETKOSOL D1, D2, and the literature review.

4.3.1. Regulation and organisation: the *status quo*

According to article 35 of EPPO Regulation (EU) 2017/1939, once the investigation has been completed, the European Delegated prosecutor must send a report to the supervising European Prosecutor with a draft decision on the outcome of the case. The draft decision could be a prosecution (art. 36, EPPO Regulation (EU) 2017/1939), with the possibility of a simplified prosecution procedure

if national law permits it, referral to the national authorities (art. 40, EPPO Regulation), or dismissal – because the EPPO is not competent – (article 39, EPPO Regulation) (Caianello, 2019, 191). The supervising European Prosecutor subsequently transmits the draft decision to the Permanent Chamber, which will take the final decision (art. 35, EPPO Regulation (EU) 2017/1939). The Permanent Chamber is part of the central structure of the EPPO. In particular, the Permanent Chamber is part of the EPPO Central Office together with the European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, and the Administrative Director (art. 8, EPPO Regulation (EU) 2017/1939).

Nonetheless, the Permanent Chamber cannot dismiss a case if the European Delegated Prosecutor has proposed to bring the case to court. This provision also shows the high degree of decentralisation of the EPPO (Claes, Werding, Franssen, 2021, 380). Once there is only one Member State with jurisdiction over the case and the Permanent Chamber decides to prosecute, it will bring the case to prosecution in the Member State of the European Delegated Prosecutor. By contrast, when several Member States have jurisdiction, the Permanent Chamber will also decide to bring the case to prosecution in the Member State of the European Delegated Prosecutor (art. 36(3), EPPO Regulation (EU) 2017/1939). Nevertheless, it may decide to prosecute in another Member State if there are sufficiently justified grounds to do so, considering the criteria set out in art. 26(4)(5) of the EPPO Regulation (EU) 2017/1939.

On one hand, article 26(4) states that a case will as, a rule, be initiated and handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offenses within the competences of the EPPO have been committed, the Member State where the bulk of the offences has been committed. In addition, article 26(4) of the EPPO Regulation (EU) 2017/1939 affirms that a European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation where a deviation from the rule set out in the previous sentence is duly justified, considering the following criteria, in order of priority: a) the place of the suspect's or accused person's habitual residence; b) the nationality of the suspect or accused person, and c) the place where the main financial damage has occurred. Furthermore, article 26(5) of EPPO Regulation (EU) 2017/1939 states that until a decision to prosecute under article 36 EPPO Regulation (EU) 2017/1939 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to relocate the case to a European Delegated Prosecutor in another Member State. In addition, again according to art. 26(5) of the EPPO Regulation, the competent Permanent Chamber can join or divide cases and, for each case, choose the European Delegated Prosecutor who manages it, if such decisions are in the interest, according to general interest of justice and according to the criteria for choosing the European delegated prosecutor in charge of the proceeding pursuant to article 26(4) of the EPPO Regulation.

Furthermore, according to article 36(4) of the EPPO Regulation, the Permanent Chamber may, on the proposal of the handling European Delegate Prosecutor, decide to join several cases, where investigations have been conducted by different European Delegate Prosecutors against the same persons with a view to prosecuting the cases in the courts of a single Member State, which, in accordance with its law, has jurisdiction for each of those cases. Once it has been decided in which Member State the case will be tried, the competent national court within that Member State must be determined on the basis of the national law (see art. 36(5), EPPO Regulation, and Claes, Werding, Franssen, 2021, 381).

4.3.2. Risk evaluation

Problems could arise in the relationship between the Permanent Chamber and the judicial investigation procedure in Belgium. Indeed, a problem may arise regarding the possibility of reconciling the decisions of the Permanent Chamber with the outcome of a judicial investigation. In the Belgian legal system, the court and the pre-trial court decide on the outcome of the judicial

investigation after receiving the prosecutor's final conclusions. A Belgian investigating judge cannot refer the case to trial; nor does it have the power to appeal to the preliminary court, which will decide on the postponement. Only the prosecutor can do this; it belongs to his powers of prosecution.

As the literature points out, if the Permanent Chamber decides to prosecute in Belgium, to refer the case to the Belgian authorities, or to dismiss the case, and the judicial investigation has taken place in Belgium, there should be no difficulty (Claes, Werding, Franssen, 2021, 381). This is because the EPPO Regulation does not exclude judicial investigation and, more generally, does not affect the role of national judges; the initiative of the preliminary courts at the end of the investigation remains unchanged. On the other hand, other legal systems – such as the Italian one – provide for a sort of "filter" at the end of the preliminary investigation, consisting of a preliminary hearing. Furthermore, art. 36(5) of the EPPO Regulation makes explicit reference to national law when it comes to determining the competent national court in the Member State where the prosecution is taking place in the EPPO case. Consequently, if the European Delegate Prosecutor receives the case file from the Belgian investigating judge after the judicial investigation has been closed, he or she draws up the final briefs, which reflect the decision made by the Permanent Chamber and take the case to the preliminary court (Claes, Werding, Franssen, 2021, 381).

There are three options in this phase. According to the literature (Claes, Werding, Franssen, 2021, 381), if the EPPO decides to prosecute, the preliminary court remains free to decide otherwise, in which case the EPPO will have to comply with that decision. If the EPPO decides to refer the case to the national authorities under art. 34 of the EPPO regulation, the European Delegate Prosecutor will transfer the case to the Belgian prosecutor. This Belgian prosecutor will then assume its role in the judicial investigation, both by preparing the definitive documents and by asking the investigating judge to carry out further investigative acts. If the EPPO decides to close the case, it should be remembered that the reasons for closing a case pursuant to art. 39(1) of the EPPO Regulation are not necessarily the same reasons for which the Belgian preliminary court can decide to close a lawsuit definitively, such as the dissolution of a legal person under investigation or accused. Nevertheless, this is not problematic since article 39(1) refers to national law; it is therefore up to the court of first instance to make the final decision on the reason for dismissal.

However, the biggest problems may arise if, under art. 36(3) or art. 36 (4) of the EPPO Regulation, the Permanent Chamber decides to prosecute in another Member State although the judicial investigation took place in Belgium. Recital 78 of the EPPO regulation is very clear on this point. It states that the EPPO Regulation requires the EPPO itself to exercise the functions of prosecutor, which includes taking decisions on a suspect or accused person's indictment and the choice of the Member State whose courts will be competent to hear the prosecution. Furthermore, recital 79 of the EPPO Regulation affirms that the Member State whose courts are competent to hear the prosecution should be chosen by the competent Permanent Chamber according to a set of criteria laid down in the EPPO Regulation.

Hence, the provisions of the EPPO regulation referred to above could be interpreted as requiring the Permanent Chamber to formally rule on the jurisdiction of the Member State in court. According to the literature, Member States are therefore obliged to allow a prosecutor to remove a case from the Belgian investigating judge. To solve this problem, the legislator could stay with the same solution that recommendation B commends when it comes to reallocating an EPPO case from one Member State to another (Claes, Werding, Franssen, 202, 382).

4.3.4. Recommendations

E) The Belgian legislator must design a new procedure to reassign investigations involving European Public Prosecutor cases from Belgium to another Member State

For these reasons, the provisions of the EPPO regulation referred to above could be interpreted as requiring the Permanent Chamber to formally rule on the jurisdiction of the Member State. According to the literature, Member States are therefore obliged to allow a prosecutor to remove a

case from the Belgian investigating judge. To solve this problem, the legislator could follow the same solution that we recommend when it comes to reallocating an EPPO case from one Member State to another (Claes, Werding, Franssen, 202, 382).

To allow a prosecutor to remove a case from the purview of a Belgian investigative judge, the Belgian legislator would have to design a new procedure based on the existing procedure for reassigning cases to international criminal courts (for example, the International Criminal Tribunal for the former Yugoslavia (ICTY), Kerr, 2004; Calvetti, Scovazzi, 2007; Calvetti, Scovazzi, 2004, Cassese, Chiavario, De Francesco, 2005) (Claes, Werding, Franssen, 2021, 379).

In other words, if the EPPO Permanent Chamber communicates that it wishes to remove a case from the Belgian judge, the Court of Cassation should withdraw the case from the investigating judges after verifying the validity of the facts within the jurisdiction of the court and seeing that no error against the subject involved has been committed (Claes, Werding, Franssen, 2021, 380). This verification does not involve the assessment of any charges. Furthermore, after the withdrawal, prosecution in Belgium is no longer possible, unless the EPPO Permanent Chamber must issue an indictment, or the procedure is inadmissible. The Belgian legislator could create such a procedure to transfer the European Public Prosecutor's cases to another Member State. Under this procedure, the court and the pre-trial court would be obliged to confirm the decision to revoke the Permanent Chamber of the EPPO after a formal review of the material competence of the EPPO and the criteria for, or revocation of, art, 26(5), of the EPPO regulation. In this way, the legislator would prevent the Permanent Chamber from withdrawing the cases without the initiative of the judge and would guarantee the protection of the right of the suspect to a "natural judge", which is part of the right to a fair trial, while respecting the decision of the Permanent Chamber as understood by the community legislator (Claes, Werding, Franssen, 2021, 380).

4.4. Overlapping between control levels: are cross-counting approaches the solution?

Dr Alessandro Nato

This recommendation focuses on the Belgian legal framework. The interview conducted with the Flemish Agency for Innovation and Entrepreneurship reveals difficulties regarding the redistribution of control competences concerning EU funds (FAIE, answer 6, BETKOSOL D4 Databook). According to the Flemish Agency for Innovation and Entrepreneurship, the EU has adopted a multi-layered approach which may have to be adapted in the future. This thesis is also strengthened by an assertion by the Flemish Audit Authority for EU Structural Funds. As the audit authority claims, the approach has changed, as the Flemish regional institution guides the whole process (FAASF, answer 6, BETKOSOL D4 Databook). The consequence would be a better structure or system of control over EU funding. In the opinion of the audit authority, a cross-cutting approach would help a lot (FAASF, answer 6, BETKOSOL D4 Databook). This recommendation is based on analysis of the Belgian legal framework, especially the case of the Flanders Region covered by BETKOSOL D1, D4, and D5. Furthermore, this recommendation is based on the study of EU law and the literature review covered by BETKOSOL D1, D2, D4, and D5.

4.4.1. Regulation and organisation: the *status quo*

If we are to introduce the issue at the heart of the recommendations, the EU framework must be examined. Regulation (EU) 1303/2013 states that for each operational programme each Member State must designate a national, regional, or local public authority or body or a private body as managing authority. The same managing authority may be designated for more than one operational programme. Furthermore, the Member State must designate, a national, regional, or local public authority or body as a certifying authority for each operational programme. The same certifying

authority may be designated for more than one operational programme. Indeed, the Member State may designate a managing authority for an operational programme. This will be a public authority or body deputed to carry out, in addition, the functions of the certifying authority. In this context, the Member States must create an audit authority functionally independent of the management and certifying authority to ensure that audit activities are carried out concerning the proper functioning of the management and control system of the operational programme, using an appropriate sample of operations proportionate to the declared expenditure. This expenditure must be audited on the basis of a representative sample and, as a general rule, using statistical sampling methods.

Unpacking the Belgian framework on management and control is also relevant to the study of the Partnership agreement concerning EU Structural and Investment Funds during MFF 2014-2020. In this regard, it is appropriate to point out that to date (April 2022) the Partnership Agreement for 2021-2027 between Belgium and the European Commission has not yet been completed and signed.

The objective of the partnership agreement was to align the strategies concerning funds between the regions, Belgium, and the EU Commission. Analysis of the previous MFF will help us understand the problems that Belgian institutions may face in the new MFF 2021-2027. As stated, before in BETKOSOL D1, the Belgian Regions have concurring competencies with the federal levels in the field of employment, social cohesion, and the economy, so the Partnership Agreement for Belgium anticipates the varying economic and social positions of the different regions and presents the different priorities for each region. For example, the economic situations in Flanders, Brussels, and Wallonia are very different. Indeed, all the provinces considered in transition are in the Walloon Region.

Concerning the Flanders Regions, the Partnership Agreement states that all EU funding programmes focus on specific topics, so limited resources can be targeted to specific issues. For these reasons, the Flemish government prepared a strategic framework to align all the operational programmes, such as the European Fund for Regional Development, the Emission Trading System, European Social Funds, the European Agricultural Fund for Rural Development, and the European Fund for Maritime Affairs and Fisheries. It is relevant to mention that the coordination of the different funds concerning the 2014-2020 period is a competence of the Flemish Minister-President. The Flemish Government is responsible for the final approval of the partnership agreement and the Flemish operational programmes.

4.4.2. Risk evaluation

Several institutions are in charge of the management, certifying, and auditing of European funds in the Region of Flanders. This brings an overlap of controls, which is amplified if we take into account the presence of other institutions for management, certification and auditing in the other Belgian regions, such as the Brussels-Capital Region and the Walloon Region.

Under the Partnership Agreement, for each structural Fund, a so-called Comité van Toezicht (Committee of Supervision) is installed with the task of managing, coordinating and communicating with other Funds. As also analysed in BETKOSOL D1, for example, concerning the 2014-2020 European Social Fund, the Flemish Government installed a Supervision Committee in 2014. It is composed of representatives of members of the Flemish Government and is presided over by the Flemish President. Its main duties are the functioning and execution of the European Social Fund (ESF) in view of its goal as well as investment in growth and employment. In particular, the Flemish Government states that the Supervision Committee will monitor the progress of the accomplishments made in the operational programme. Indeed, it will examine the results concerning the execution of the goals, examine the year-end report and the final report of the programme, and study the European Commission control report. Similarly, the management authority for the ESF and the ESF certifying authority, a Flanders ESF Agency, was set up and has been in operation since 2016. The ESF division and Durable Entrepreneurship are the management and certifying authorities for the European Social Fund, which is a division of the Department of Work and Social Economy falling under the competence of the Flemish Minister of Work and Social Economy. Moreover, a different management

and certifying authority has been put in place for the European Fund for Regional Development (EFRO): Flanders Innovation & Entrepreneurship.

As for the competence to audit, since 2007, the Flemish audit Authority has been responsible for auditing the European Social Fund (ESF), the European Fund for Regional Development (EFRO), the European Fund for Asylum, Migration and Integration (AMIF), and the interregional Flanders-Netherlands Programme. The Flemish Audit Authority is linked to the Flemish Department of Finance and Budget. The Inspectors have full authority over the competences mentioned in Regulation (EC)1083/2006 and Council Decision (EU) 2007/435/EC 22. The Audit Authority has been updated in order to comply with Regulation (EU) 1303/2013, which also requires Member States to establish an audit authority. On the one hand, the main tasks of the Audit Authority are to ensure the Commission a reasonable amount of certainty on the function of the management and certifying bodies of the European Structural Funds. On the other hand, the Audit Authority determines the correctness of the statements of expenditure delivered to the Commission in order to ensure a reasonable amount of certainty concerning the legality and regularity of the underlying transactions. In addition, the Audit Authority cooperates with the Commission to coordinate audit plans.

Furthermore, the Belgian authorities have designated another body to work on the audit action. Indeed, art. 128 of Regulation (EU) 1303/2013 states that if a Member State has designated more than one audit authority, Member States may designate a coordination body. This is the case in Belgium. The Interfederal Corps of Finance Inspection closely works together with the Flemish Audit Authority and the other regional bodies, such as the Service Audit des Projects Européens (SAPE), the Walloon and Brussels audit authority for the European Structural Funds.

4.4.3. Recommendations

F) Adopting a cross-cutting approach to overcome the overlapping of control competences relating to EU funds

Belgium has a complex constitutional landscape, which of course also has consequences on the management and control of the EU structural and investment funds. For third parties, it may not always be clear what institution or administration is either managing or auditing certain EU funds. This uncertainty is furthermore enforced by the fact that Belgium also has a supervising body: the Interfederal Corps of Finance Inspection, which may have competences concerning the auditing of EU funds. Furthermore, the territorial system in Belgium is subject to periodic constitutional reforms, which may have a significant impact on the managing authorities of the diverse European funds. To overcome the difficulties regarding the overlapping of control competences relating to EU funds, a cross-cutting approach should be recommended. This approach may ensure that the tasks of managing, certifying, and auditing are better divided both at the level of the Flemish region and the various Belgian regions.

Part V

Recommendations for the German case

Part V

Recommendations for the German case

5.1 The prevention and prosecution of criminal offences – expanding forensic IT personnel, expertise, and competence at the State Criminal Investigation Offices

Dr Eva Kiel (formerly Rulands)

Since neither German security law nor criminal law provides for a distinction between national and EU financial interests, deficits in domestic crime prevention and prosecution directly affect the financial interests of the EU. During the study, connecting points for increasing efficiency about the digital and technical resources of German police authorities can be observed.

5.1.1. Regulation and organisation: the *status quo*

General digitalisation and mechanisation also have an impact on criminogenic structures, in that not only is widespread use made of electronic information systems, but encryption techniques are also employed. Effects can be observed not only on preventive police work. Technical progress is also affecting the investigative process through a "secretification" of criminal investigations (Schünemann (2007), p. 949). However, the limits of the mechanisation of the investigation procedure are set by constitutional law, in particular the principles of legality and proportionality, as well as the fundamental rights to informational self-determination and guaranteeing the confidentiality and integrity of information technology systems (the so-called fundamental computer right) (Vogel (2012), p. 482). Against this background, the use of data mining tools in criminal prosecution is only permissible if qualified thresholds of initiative are reached, namely under the condition of a consolidated actual suspicion (Federal Constitutional Court, decision of 10.11.2020 – BverfGE 156, 11, marginal no. 120). However, German criminal procedure law now provides for a wide range of – in part very far-reaching – standards of authority for the use of secret investigative measures employing technical means. Measures such as telecommunications surveillance (section 100a of the Code of Criminal Procedure), online searches (section 100d of the Code of Criminal Procedure), and the seizure of computers and mobile devices under sections 94 and following of the Code of Criminal Procedure, regularly involve large amounts of data. The technical and human resources to carry out these measures are held solely by the police authorities, which has led to a strengthening of the role of the police in criminal proceedings (Singelnstein (2018), p. 729). It is paradigmatic for an overall increased focus on crime prevention, which has made predictive policing and the immense amounts of data from forecast-based policing an integral part of German security law. This corresponds with the Federal Constitutional Court's lower threshold for the use of data mining tools in this area, in that actual indications of the emergence of a concrete danger are sufficient here (Federal Constitutional Court, decision of 10.11.2020 – BverfGE 156, 11, marginal no.118, 130). The laws of the federal states also provide for numerous enabling norms which (for example Section 25a of the Hamburg Law on Public Safety and Order and Section 49 of the Hamburg Police Data Processing Act) allow for further processing of personal data by means of automated applications for data analysis under certain conditions.

A prerequisite for the successful use of data mining is not only a certain quantity of data, but also high data quality, which in turn depends on the continuous control of data management (Povalej/Volkmann (2021), p. 58f.). Even beyond data-mining, the quality and quantity of accessible data are important factors in the efficiency of preventive and repressive measures. The "Police 2020" programme, which was created by the Federal Ministry of the Interior to implement the so-called

Saarbrücken Agenda, should make a contribution to this. The project is designed for harmonisation and data exchange and fashions the standardisation and centralisation of the IT infrastructure of the police authorities at federal and state level via the interface function of the Federal Criminal Police Office (BKA) (for more information see Police 2020 – White Paper – available here.

As far as organisation in terms of personnel is concerned, the IT forensic experts of the state criminal investigation offices are primarily entrusted with securing and evaluating digital evidence and developing forensic investigation procedures. In addition, external expertise is used – in the recent past increasingly also in the area of complex white-collar crime proceedings (Wackernagel/Graßie (2021), p.12). The consultation of experts pursuant to section 161a paragraph 1, sentence 2, in conjunction with section 73, paragraph 1, sentence 1, is not permitted. Section 73, paragraph 1, sentence 1 of the Code of Criminal Procedure is only permissible if it is precisely the special expertise of the person consulted that is important, i.e. it is not functionally a matter of investigative acts for the fulfilment of which special knowledge is not required (Momsen/Rackow/Schwarze (2018), p. 627). A general outsourcing of investigative tasks for reasons of personnel overload or to save costs is therefore not possible (Wenzel (2016), p. 87). In addition, sovereignty over the investigative procedure must always remain with the public prosecutor's office. In this respect, recourse to external personnel resources is to be measured against the impartiality of the public prosecutor's office, through which the limits of "privatisation of criminal proceedings" are set (Federal Constitutional Court, decision of 31.8.2007 – 2 BvR 1681/07, marginal no. 6).

5.1.2. Risk evaluation

The above explanations show that the success of both preventive and repressive police work depends on the material and personnel resources of the investigating authorities. The allocation of resources thus becomes a criterion for the efficiency of police work and in this way is also of decisive importance for the protection of the EU's financial interests. It was precisely here, however, that deficits were observed in the course of the qualitative study. Rapidly advancing technical development is in contrasted to insufficient personnel and equipment as well as a lack of expertise on the part of the police authorities. The inefficiency of the software available for evaluating the hardware (Public Prosecutor's Office (Hamburg), BETKOSOL D4 Databook, answer 3.a) leads to long waiting times when mirroring digital data carriers (Internal Investigations Department (Hamburg), BETKOSOL D4 Databook, answer 3.1). The delays caused by this can force criminal proceedings to the limits of the statute of limitations for prosecution and thus jeopardise them (BETKOSOL D4, 4.4). At the same time, access to private service providers is strictly limited under the current law. The investigating authorities therefore often find themselves in a field of tension between endangering the investigation on the one hand and the illegal use of external expertise on the other, especially in complex economic and tax-related criminal proceedings.

The "Police 2020" project is an important step towards dismantling the federal "patchwork". However, a mature, centrally organised and standardised IT infrastructure and a high-quality information technology base are only one of two pillars. Without an adequate human and material base in terms of quantity and quality, they cannot support efficient police work in modern criminogenic structures. In this respect, the study has shown that Germany lacks above all the basic prerequisites for efficient police work.

5.1.3 Recommendations

In view of the results of this study, the recommendation is to expand the IT forensics of the state criminal investigation offices in terms of personnel, expertise, and competence. At the same time, a corresponding orientation of the allocation of resources could also lead to an increase in efficiency about the activities of the European Public Prosecutor's Office. Against this background, additions to the "Police 2020" project and the those organised under its umbrella are therefore necessary. The focus must be on basic prerequisites, in particular:

A) the creation of additional posts in the forensic IT departments of the state criminal investigation offices
B) the provision of high-performance hardware and software, and
C) close-meshed offers for further training in information technology

The creation of a legal framework for involving private IT experts, which is possible in principle, would only allow for limited relief from in view of the limits set by constitutional law. Moreover, it is not preferable in terms of costs.

5.2. Access to information on aid granted – the obligation to establish a national *de minimis* central register

Dr Eva Kiel (formerly Rulands)

During the empirical study, a risk to the EU's financial interests was identified at the operational level of the administrative procedure. It follows from the fact that in Germany it is only possible to trace individual subsidies to a limited extent, which has an impact on compliance with *de minimis* limits on the one hand and the exclusion of double funding on the other.

5.2.1. Regulation and organisation: the *status quo*

The *de minimis* rule applies within the framework of the European Commission's state aid control. Article 107 paragraph 1 TFEU states that state aid that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the internal market insofar as it affects trade between Member States. The Commission must in principle be notified about aid of this kind pursuant to art. 108(3) TFEU in conjunction with art. 2 State Aid Procedure Rules. However, art. 109 TFEU provides for the possibility of defining aid that is exempt from this notification requirement. The European Commission assumes that up to a certain threshold, aid does not affect trade between Member States and is therefore compatible with the common market. With the so-called *de minimis* Regulation (Regulation (EU) no. 1407/2013), it has therefore regulated by way of regulation (art. 108(4) TFEU) that transparent aid granted to a single undertaking and not exceeding a total amount of €200,000 – in the road haulage sector up to €100,000, and, under certain conditions, also subsidised loans of up to €1,000,000 – within three fiscal years are exempt from the notification requirement, in so-called *de minimis* aid (see recital three of the *de minimis* Regulation).

Currently, the procedure for complying with the *de minimis* limits in Germany is designed in accordance with the requirements of art. 6(1) of the De Minimis Regulation in such a way that the granting authority certifies the subsidy value to the beneficiary with the so-called *de minimis* certificate, and the beneficiary certifies in return that the maximum permissible amount has not yet been exhausted in the assessment period. If the information provided by the applicant is incorrect, incomplete, or if facts relevant to the subsidy are not disclosed, criminal liability for subsidy fraud pursuant to Section 264 of the Criminal Code is possible. Germany has not yet made use of the possibility provided for in art. 6(2) of the D minimis Regulation to introduce a *de minimis* central register instead of the above procedure.

The prohibition of double funding is of particular importance in Germany, as the administrative competence for the funds from the European Structural Funds lies with both the federation and the individual federal states. This gives rise to the possibility of complementary funding from federal and state funding pots as well as from different federal states. In addition, the prohibition of double funding also becomes virulent in the case of so-called cross-financing, for example when EFRE and ESF funds are granted side by side.

To avoid double funding, the funding programmes of the federation and the federal states as well as those of the individual federal states are coordinated with each other (BETKOSOL D1, p. 219). Joint committees of the federation and the federal states facilitate coordination in this respect. In

addition, representatives of other EU funding programmes are involved in the monitoring committees for the respective programmes of the federal states. Joint intermediary bodies of the individual funds at the level of the individual federal states facilitate coordination in the concrete approval procedure. In addition, a declaration on the exclusion of double funding is requested from the applicant, and non-compliance is punishable by law (Section 264 of the Criminal Code).

5.2.2. Risk evaluation

The only limited, since it is not centralised, access to already granted funds and ongoing application procedures means a protection gap for national as well as EU financial interests. This concerns first compliance with the *de minimis* limits, which is in practice currently difficult to implement at the administrative level. If the *de minimis* control is decentralised – as in Bremen – the administrative authorities are dependent on the beneficiary providing accurate information in the *de minimis* certificate. This is all the more so if companies are active throughout the internal market – and thus across German national borders. Insofar as it was observed during the empirical study that irregularities in connection with the allocation of state funds in Germany are almost exclusively due to errors in the application procedure (BETKOSOL D4, 4.4.), this risk is favoured by a practical shift of the *de minimis* examination onto the applicant. Even though the concept of “single undertaking” has now been defined more precisely and simply in art. 2(2) of the De Minimis Regulation, special challenges arise in individual cases due to company mergers, company takeovers, and company splits when determining the *de minimis* threshold. If a large number of companies in a group of companies have to be included in the assessment process, the risk of error also inevitably increases.

There are also gaps in protection with regard to the exclusion of double funding. In this respect, the ultimately unavoidable overlaps in the funding spectrum offer a gateway for the use of double funding. Gaps in risk control can be observed at the operational administrative level in particular. It is true that the risk of double funding can be reduced by checking the eligibility for funding from other programmes and, if necessary, by organising an inter-agency exchange. Ultimately, however, efficient implementation of the ban on double funding is only possible if the administrative authority involved in the approval process has access to reliable information on all aid granted in the past.

5.2.3. Recommendations

Against the background of the evaluated risks for national and EU financial interests, a recommendation is made to

D) the obligatory introduction of a national* de minimis *central register in accordance with art. 6(2) of the De Minimis Regulation as well as
E) an intensification of exchange with (potential) applicants.

Insofar as the Federal Government has referred in the past to the bureaucratic burdens associated with setting up the register and collecting the data (Federal Government (2013), p. 8), this does not outweigh the expected benefits. This is also because a cross-MS data exchange to be envisaged would make the *de minimis* certificate obsolete in the long term and thus contribute to an overall reduction in the administrative burden. In addition, also in view of the NGEU, it is not to be expected that there will be a significant reduction in programme diversity in the future, which would make the centralisation of data control even more important. The federal structure in Germany favours the control possibilities resulting from insufficient *de minimis* limits and double funding. Since risk control is not possible at federal state level, the introduction of a national *de minimis* register is necessary to improve the protection of national and EU financial interests.

Parallel to the obligatory introduction of a national *de minimis* central register, an intensification of the exchange with (potential) applicants is opted for. Raising awareness of the funding spectrum of the individual programmes and their combinability can contribute to reducing the risk of unintentional double funding.

5.3. Shared management of funds – broadening the scope for action and implementing a national risk assessment strategy

Dr Eva Kiel (formerly Rulands)

During the study, it was confirmed that the financial interests of the EU are protected to a high level in Germany. However, it has been shown that the tight corset of European law regulations inhibits administrative practice and does not sufficiently take regional specificities into account. The need to broaden the scope for action, which can be observed in this respect, meets with a potential that has so far only been insufficiently exploited about national strategies for risk assessment. The qualitative study has thus produced two interlocking starting points through which an increase in the level of protection of the EU's financial interests can be achieved.

5.3.1. Regulation and organisation: the *status quo*

Art. 6 of Regulation (EU) no. 1303/2013 (ESI Regulation) stipulates that, in addition to Union law, the relevant national law must be applied in the area of the shared management of funds. In Germany, this is first and foremost state funding law, the relevant legal basis for which is primarily the budgetary regulations of the Federation and the federal states, which apply beyond the financial year, and the administrative regulations issued in this regard. The budgetary regulations of the Federation and the federal states are almost identical in large parts and also in the sequence of paragraphs (Müller/Richter/Ziekow (2017), A. marginal no. 57). Essentially, the law on grants is based on the core provisions of Sections 23 and 44 of the federation and federal states' budgetary regulations. According to these provisions, granting a subsidy is dependent on the fact that the federation or the federal state have a substantial interest in the recipient fulfilling the underlying purpose and that this interest cannot be satisfied – or cannot be satisfied to the necessary extent – without the subsidy (principle of subsidiarity). The recipient of the grant is obliged to prove to the granting authority that the funds have been used for the purpose for which they were intended, and the granting authority in turn has a statutory right to audit the use of the funds. The administrative regulations of the budgetary regulations together with the annexes specify the requirements for approval, whereby the creditworthiness check of the funding recipient plays a special role. The annexes to the administrative regulations of the federation and federal state budget regulations also regulate the general auxiliary conditions for grants (ANBest), which contribute to standardised grant practice.

In principle, the granting authority has a wide margin of discretion, i.e., it may grant funding but does not have to (Noll (2000), p. 212). However, grants may only be awarded if the budget legislature has budgeted for them in the budget, which is enacted together with the budget law for each budget year by the federation and the federal states. In exercising its discretion, the granting authority is bound by the relevant provisions both with regard to the amount of the grant and the purpose pursued with it (Rossi (2019), Section 44 BHO, marginal no. 52). Special features may result from the provisions of the specific law on grants. They supplement, modify or override the general law on grants, i.e., the law applicable to all state grants (Müller/Richter/Ziekow (2017), A. marginal no. 5). These include, among others, the special administrative regulations issued as funding guidelines at both federal and state level and the associated implementing provisions. They contain binding regulations for the administration on the content and procedural requirements of individual funding areas and ensure transparency and uniformity in the processing of grants. Funding guidelines initially apply internally in the administration by guiding the discretion of the granting authority but can become the subject of funding decisions by way of ancillary provisions and in this way have a binding effect on the recipient of the funding.

Projects that are also financed by the ESI Funds must meet the requirements of the administrative and control systems of the federal states. For the administration of the ESF in Bremen, it was observed in the course of the study that the requirements of the administration and control system are many times more concrete than the requirements under national law and allow significantly less scope for action in the concrete design of procedures. In addition, project audits for each payment application and regular system audits by the audit authority, as well as audits by the certifying authority and thus a closer-meshed audit interval, are provided for than at the purely national level, where audits are significantly less and almost exclusively carried out by the court of auditors of the federal state. The management and control system of the ESF administration in Bremen specifies the tasks of the agencies involved and sets out the individual responsibilities of each one. In addition, the procedure is predefined via a total of 12 procedural rules.

5.3.2. Risk evaluation

- **Disruption due to far-reaching restrictions on the authorities' scope for action**

The protection of the EU's financial interests in shared management of funds moves between the desire for procedural simplification on the one hand and the need for tight controls on the other. As far as procedural simplification is concerned, the discretion granted to the authorities in the approval procedure and its concretisation via funding guidelines allow for flexible reactions to unexpected developments. They are already an essential instrument of risk control because they ultimately also contribute to the implementation of the objectives of the operational programmes, taking into account regional specificities. The empirical study showed that the EU guidelines were sometimes perceived as too extensive and restrictive by the managing authority (ESF Administrative Authority (Bremen), BETKOSOL D4 Databook, answer 8.c). Unexpected developments may require adjustments in order to achieve the funding objectives. However, far-reaching restrictions on the scope for action do not only occur as sources of disruption for the achievement of objectives. Changes to the risk structure can make short-term adjustments in the approval and disbursement practice necessary. Rigid requirements are also a disruptive factor in this respect.

Nevertheless, a too far-reaching simplification of procedures would collide with concern for effective crime prevention. Risks (but only for the national financial interests) can be shown in this respect in the proof-of-use procedure. Numerous federal states allow a so-called simple proof of use here, in which not every single entry has to be shown, but a summary of the income and exceptions is sufficient. Berlin and Brandenburg even allow a declaration by the beneficiary that the grant has been used for the intended purpose. This trend towards procedural simplification and the associated loss of control are rightly said to have negative effects on crime prevention (Mansdörfer/Kleemann/Ziegler (2017), p. 139). The stricter EU requirements with regard to the proof of use procedure are therefore to be welcomed from a crime prevention perspective. This corresponds to the fact that risks at the level of control and auditing were not observed in the course of this study. On the contrary, the existing control mechanisms were assessed as sufficient by the ESF administrative authority interviewed (ESF Administrative Authority (Bremen), BETKOSOL D4 Databook, answers 3.a and 6.b), and this assessment is confirmed by the only isolated irregularities that occurred.

- **Lack of a national strategy for risk assessment**

The practice of allocation is integrated into the contingency of risk phenomena in a modern risk society. They are characterised by technical progress in flux and also affect criminogenic structures (see in detail above, A.I.). Crucial for the protection of national and EU financial interests is a constant evaluation and assessment of new risk potentials and protection gaps in funding practices, which in turn depend on functioning mechanisms for inter-agency exchange. One instrument is the legal obligation to report and provide information, which can be found in numerous places in German law, for example in sections 43 and 44 of the Money Laundering Act (GWG). However, they only apply to certain circumstances that are predefined by law. The associated statics only assign them a limited function with regard to risk evaluation.

A risk evaluation across the federal states must therefore rely on information channels and mechanisms that enable a more comprehensive exchange on a horizontal and vertical level. With ARACHNE, the European Commission in principle provides a risk assessment tool that would allow an exchange of risk data – also across federal states. On the part of the federal states, however, a cautious attitude can be observed in this respect, which is also reflected in the negative statement of the Federal Council with regard to the mandatory introduction of this data mining tool (Bundesrat (2021), p. 2). However, within the scope of the study here, no mechanism could be observed that allows for an exchange across the federal states on new (especially fraud) risks and, in particular, also includes the administrative authorities entrusted with the authorisation procedure. Against this background, deficits with regard to the protection of national and EU financial interests are discernible. On the one hand, there is a lack of information channels able to allow an exchange of risks on horizontal and vertical levels. Furthermore, there are no convincing tools for assessing information and classifying risks.

5.3.3. Recommendations

Efficient controls with the best possible knowledge of risks and, at the same time, the greatest possible preservation of scope for action create a stable level of protection for the EU's financial interests in the area of shared management of funds. Against this background it is recommended to implement:

F) the evaluation of region-specific required scope for action on the part of the granting authority and its implementation in the management and control systems and

G) the implementation of a national risk assessment strategy

With regard to the increased focus on discretionary scope in connection with the establishment of procedural rules for the administration and control systems, it must be stated that especially in the territorial states, structural differences of the individual regions force adjustments in administrative practice. The evaluation of region-specific required scope for action and its subsequent implementation in the procedural rules of the administration and control systems, for example through the regulation of narrowly defined exceptional circumstances, increases a more goal-oriented administrative work. In addition to greater involvement of administrative staff working in related areas, it could also be useful to take into account the funding guidelines in these areas. Over the years, national funding legislation has been adapted to the structural characteristics of the individual federal states and regions; the experience gained and agreed upon in this regard should also be used in the area of shared fund management.

The implementation of a national risk assessment strategy would allow a short-term reaction to emerging risks and the adjustment of authorisation and disbursement practices. Its conceptual elaboration would have to be based on three pillars, namely information input, information evaluation, risk classification, and information output. It would also require a detailed investigation of the structural, institutional, personnel and factual *status quo*, and for this reason cannot be the subject of the present study. However, within the framework of the qualitative survey, it was possible to generate findings on the constitutional pillars of information input and output. They refer to the coordination function of Unit EA 6 of the Federal Ministry of Finance in the structure of EPPO, OLAF, the Federal Criminal Police Office (BKA) and the administrative authorities (see BETKOSOL D4, 5.3.). Information channels to investigative authorities with national and cross-border contact points, and the authorities entrusted with the granting procedure, identify the unit as a strategically important interface in connection with the implementation of a national risk assessment strategy.

5.4 Advancing the quest for simplification and making cooperation meaningful

Prof. Hilde Caroli Casavola

5.4.1. Regulation and organisation: the *status quo*

Generally speaking, it is crucial to make EU cooperation with the federal government (*Bundesstaat*) and the federal states (*Länder*) meaningful. Regulations must take into account both the impact on administrative practice and the constitutional constraints referable to the federal structure of the *Deutsche Republik*. Regarding the first aspect, the time required by administrations in the latter (federal government) to coordinate and implement regulations must be taken into account; regulations as a basis for action by the administrations must be reliable, consistent and comprehensible; the information of the administrations in the Federal state has to be organised. As for the second aspect, in the course of the empirical study, concern about the EU's standardisation efforts emerges more than once: "[e]*fforts at standardisation on the part of the federal government in Germany come up against the limits set by federalism*" (D4 (7.1), 3.a, p. 48), "[f]*urther standardisation is also not feasible in practice because the needs of city states and territorial states differ, as do those of the 'old' and the 'new' federal states"* (D4 (7.1.), 9.c, pp. 48-9).

5.4.2. Risk evaluation

It might be useful to further develop the entire administration and control system from the point of view of subsidiarity and with the aim of reducing the requirements for administrative organisation in the federal states. From this perspective, it is essential that the EU Financial Control Unit (EFK - *Europäische Finanzkontrolle*, *Bescheinigende Stelle*; certifying body) work functionally and that the sample audits do not reveal any errors above the regular material average of ordinary legal financial procedures (or not-risky level). It should become possible to eliminate additional organisational units as soon as this has been achieved.

5.4.3. Recommendations

H) Advancing the quest for simplification and making cooperation meaningful.

It is important to make consistent use of the federal government's remaining opportunities for simplification in the existing system. Simplifications that are still possible should be examined and implemented (see the reference to *simplified cost options* and the quest for flexible designed procedures in D.4 (7.2), 4.b, p. 50, by the ESF Authority). It is widely believed (among institutional officials) that with regard to spending European funds, administrative costs can often be much higher than the financial "correction" of formal irregularities. For this reason, when designing control procedures for funding programmes, the administrative burden must be taken into adequate account. EU funds should not be used if the additional costs exceed the EU funds.

A last critical, more detailed, issue relates to the competent national prosecutor's service staff (*Geschäftsstelle*): as only the Prosecutor himself is paid by the EU, his staff members are not granted access to the EU database and the information on aid that has been granted. In fact, they are *Landesbeamte* – State officials – and are paid by the German federal states. As a consequence, a restriction on access to EU databases for prosecutor's assistants can slow down the entire administrative procedure and jeopardise the work of the competent national prosecutor.

References

The deliverable D6 is based on the literature available in D1 and D2, except for some novelties and the decision of the authors to make specific references. The complete list of these references, bar indications of the online location in the text, is available below.

Andor, L. (2020). SURE—EU Capacity for Stabilising Employment and Incomes in the Pandemic. Intereconomics, 55, 139-142.

Bundesrat (2021). Empfehlungen des Ausschusses für Fragen der Europäischen Union, des Finanzausschusses und des Wirtschaftsausschusses zum Vorschlag für eine Verordnung des Europäischen Parlaments und des Rates zur Einrichtung der Reserve für die Anpassung an den Brexit. Drucksache 39/1/2 vom 22.1.2021. Abrufbar unter: https://www.bundesrat.de/SharedDocs/drucksachen/2021/0001-0100/39-1-21.pdf?__blob=publicationFile&v=1.

Calvetti G., Scovazzi T. (2007), Il Tribunale per la ex-Jugoslavia: l'attività svolta e il suo prossimo scioglimento. Milano, Giuffré.

Cassese A., Chiavario M., De Francesco G. (2005), Problemi attuali della giustizia penale internazionale, Giappichelli, Torino.

Chociej, A.P. (2018). Selected Issues on the Protection of the European Union's Financial Interests, In Lotko, E., Zawadzka-Pąk, U.K., Radvan, M. (eds.). Optimisation of Organisation and Legal Solutions concerning Public Revenues and Expenditures in Public Interest (Conference Proceedings), Białystok-Vilnius.

Chociej, A.P. (2020). Ochrona interesów finansowych Unii Europejskiej przez instytucje unijne i krajowe na przykładzie Polski, Białystok.

Cieślak, R. (2015). Nieprawowości związane z realizacji projektów finansowanych ze środków unijnych jako podstawa dochodzenia odpowiedzialności za naruszeny finansów publicznych, In Finanse Komunalne, no. 10, pp. 6-22.

Claes A. L., Werding A., Franssen V. (2021), *The Belgian* Juge d'Instruction *and the EPPO Regulation: (Ir)reconcilable?, in European Papers, pp. 357-391.*

Czempas, J./ Smykała, J. (2012). Ryzyko, błędy i trudności przy absorpcji środków unijnych, In Finanse Komuinalne, no. 6, p. 20-30.

D'ambrosio C. (2020), Dal Meccanismo Europeo di Stabilità ai "Corona Bonds": le possibili alternative per fronteggiare la crisi dell'eurozona a seguito dell'emergenza Covid-19, in Eurojus, 115-126.

Giupponi G., Landais C. (2020), Building effective short-time work schemes for the COVID-19 crisis, CEPR Discussion Paper.

Kerr, R. (2004). *The international criminal tribunal for the former Yugoslavia: an exercise in law, politics, and diplomacy*. Oxford, Oxford University Press.

Kowalski, P. (2021). Ocena projektu ustawy o Agencji Spójności i Rozwoju (druk senacki 320)

Krzykowski, P. (2013). Nieprawidłowości przy realizacji projektów współfinansowanych ze środków unijnych w perspektywie finansowej 2014–2020, Olsztyn.

Krzykowski, P. (2013). Principles of imposing financial corrections on projects co-financed from EU funds for violations of public procurement law by local government units, In Journal of Modern Science, no.16(1), pp. 191-208.

Mansdörfer, M./Kleemann, S./Ziegler, M. (2017). Subventionskriminalität in Deutschland – eine empirisch-kriminologische Untersuchung.

Momsen, C./Rackow, P./Schwarze, M. (2018). Dolmetscher und Sprachsachverständige als Ermittlungshelfer? Rechtsfragen des Einsatzes von Sprachsachverständigen beziehungsweise Dolmetschern – zugleich Anmerkung zu dem Urteil des LG Hamburg vom 9.5.2016 – 608 KLs 1/15. In Neue Zeitschrift für Strafrecht (pp. 625-630).

Müller, H.-M./Richter, B./Ziekow, J. (2017). Handbuch Zuwendungsrecht. Rechtsgrundlagen. Verfahren. Rechtsschutz.

Noll, M. (2000). Haushalt und Verfassung : Normen, Reformen, Trends ; eine Einführung in das Haushalts- und Verfassungsrecht der Bundesrepublik Deutschland sowie der Europäischen Union.

Petzold, H. A. (2020). The SURE Initiative, Short-time Work Compensation, and State Aid, European State Aid Law Quarterly, 161.
Pod kątem skuteczności działania podobnych rozwiązań w innych państwach UE, on-line access: https://www.senat.gov.pl/download/gfx/senat/pl/senatekspertyzy/5785/plik/oe-330_2.pdf
Podkowik, J. (2012). Charakter prawny wytycznych dotyczących programów operacyjnych finansowanych ze środków UE, In Zeszyty Naczelnego Sądu Administracyjnego, no. 4, pp. 69-86.

Povalej, R./Volkmann, D. (2021). Predictive Policing. In Informatik Spektrum (pp. 57-61).

Poździk, R. (2014). Principles of implementation of EU funds in 2014-2020, In Europejski Przegląd Sądowy, no. 12, pp. 4-11.

Rossi, M. (2019). In Gröpl, C. (Herausgeber). Bundeshaushaltsordnung. Landeshaushaltsordnungen. Staatliches Haushaltsrecht. Kommentar. 2. Auflage.

Schünemann, B. (2007). In: Zeitschrift für die gesamte Strafrechtswissenschaft (pp. 945 -).

Sendrowski, P. (2019). Nieprawowości i nadużycia finansowe w projekcie współfinansowanych z funduszy UE, LEX/el.

Singelnstein, T. (2018). Digitalisierung, Big Data und das Strafverfahren. In Stein, U./Greco, L./Jäger, C./Wolter, J. Systematik in Strafrechtswissenschaft und Gesetzgebung. Festschrift für Klaus Rogall zum 70. Geburtstag am 10. August 2018 (pp. 725-738).

Stellungnahme der Bundesregierung der Bundesrepublik Deutschland zum Entwurf einer Verordnung der Kommission vom 17. Juli 2013über die Anwendung der Artikel 107 und 108 des Vertragsüber die Arbeitsweise der Europäischen Union auf De-minimis-Beihilfen (2013), abrufbar unter: https://docplayer.org/109708210-Stellungnahme-der-bundesregierung-der-bundesrepublik-deutschland.html

Tempińska, K. (2021). Kontrola projektów realizowanych przez beneficjentów środków unijnych, Warszawa (LEX/el.).

Vogel, J. (2012). Informationstechnologische Herausforderungen an das Strafrecht. In Zeitschrift für Internationale Strafrechtsdogmatik (pp. 480-485).

Wackernagel, U./Graßie, C. (2021). Die Beauftragung von IT-Forensikern im Ermittlungsverfahren: Zulässige Sachverständigenbeauftragung oder unzulässiges Outsourcing originärer Ermittlungstätigkeit? In Neue Zeitschrift für Strafrecht (pp. 12-18).

Wenzel, H. (2016). Rechtliche Grundlagen der IT-Forensik. In Neue Zeitschrift für Wirtschafts,-Steuer- und Unternehmensstrafrecht (pp. 85-93).

Wójtowicz-Dawid, A. (2020). Monitoring, kontrola i audyt wykorzystywania środków Unii Europejskiej, Warszawa (LEX/el.).