

## Newsletter BETKOSOL n. 1/2022

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### Last updates

→ One year of activity for the BETKOSOL project! To remember its beginning, available online the Report of the Kickoff Online Meeting 28 January 2021.

Visit the website [here](#).

→ It is online, on the [EU Law Live Blog](#), the paper The Protection of EU Financial Interests within Next Generation EU, by Professor Aldo Sandulli.

Visit the website [here](#).

→ D.3: The empirical research was concluded on 30 November 2021. The BETKOSOL Team is now writing the two final reports.

### Flash news

#### → European Commission proposes First Package of New Own Resources

On 22 December 2021, the EU Commission presented the First Package of New Own Resources. It consists of: (1) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ([here](#)); (2) Proposal for a Council Decision amending Decision (EU, Euratom) 2020/2053 on the system of own resources of the European Union ([here](#)); (3) Proposal for a Council Regulation amending Regulation (EU, Euratom) 2020/2093 laying down the multiannual financial framework for the years 2021 to 2027 ([here](#)).

With this package, the EU Commission proposes the establishment of the next generation of own resources from the EU budget. There will be three new sources of revenue: (1) revenue from emissions trading; (2) the resources generated by the proposed carbon adjustment mechanism at the EU borders; (3) the share of residual profits of multinational companies that will be reallocated to EU Member States, according to the recent OECD/G20 agreement on the partial redistribution of taxation rights. These new sources of revenue, once fully operational in the years 2026-2030, should be

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able to generate on average up to 17 billion euros per year for the EU budget. For these new own resources to flow into the EU budget, the EU Commission proposes the modification of the own resource's decision and the modification of the EU budget regulation in the long term for the period 2021-2027. In response to the challenge of the Covid-19 pandemic, the EU approved the Next Generation EU in 2020 with which the EU Commission was authorized to issue massive quantities of bonds guaranteed by the EU budget. The EU can therefore take on debt to support all Member States in fighting the pandemic crisis. To help repay the loan, the EU institutions agreed to introduce new own resources. In this way, new forms of revenue will be possible thanks to which the reimbursements due to Next Generation EU will not lead to undue cuts in EU programs or excessive increases in Member States' contributions. With the new resources proposed in the package, it will ultimately be possible to reimburse the amounts collected by the EU to finance the non-repayable component of Next Generation EU.

## → The Court of Justice of the EU finds that the former Belgian minister abused the EU office and funds as a member of the Court of Auditors

In the case-law C-130/19 of the September 30, 2021, the EU Court of Justice found former Belgian Minister of Defense and Agriculture Karel Pinxten "guilty of very serious infringements" in the exercise of his office as a member of the European Court of Auditors (ECA) (see [here](#)).

During his two terms at the ECA between 2006 and 2018, Pinxten, who was a member of current Belgian Prime Minister Alexander De Croo's Flemish liberal party Open VLD, illegally remained involved in national politics and made improper use of EU funds and the ECA's resources by charging skiing and hunting trips to the institution, according to the judgment by the European Court of Justice.

The judges ordered that Pinxten lose two-thirds of his European pension rights from the day of the ruling, September 30, 2021. A criminal case is still ongoing. The judges ruled that Pinxten "purposefully and repeatedly broke the institution's rules and thereby systematically acted in violation of his most fundamental obligations" (see [here](#)). "Pinxten also repeatedly tried to hide the infringements. In addition, the irregularities largely contributed to his personal enrichment," the Court of Justice said in its statement (see [here](#)). The EU Court of Justice also found that "the continuation of the irregularities was facilitated by the vagueness of the institution's internal rules," according to the statement (see [here](#)).

It is the Secretary-General of the ECA itself, who after an internal investigation first turned to OLAF, the European Anti-Fraud Office, and later to the European Court of Justice in the case. Upon a request by OLAF, the State Prosecutor at the District Court of Luxembourg also started investigating the case. The ECA waived Pinxten's immunity in November 2018, and criminal proceedings have been going on since. The ECA said the ECJ's judgment confirms that its request regarding Pinxten "not fulfilling the obligations arising from his office as a member of the ECA was grounded" (see [here](#)). "The ECA will closely follow the further proceedings regarding the financial recovery and other judicial steps," a spokesperson for the institution said (see [here](#)).

## → Cooperative Compliance Measures to Combat Organised Crime Infiltrations in the Legal Economy (Law No. 233 of 2021)

With the Decree-Law No. 152 of 2021, as converted by Law No. 233 of 2021 (full text available [here](#)), the Italian Parliament has approved urgent provisions - *inter alia* - for the prevention of mafia infiltration in economy and business, in the context of the implementation of the National Recovery and Resilience Plan.

This reform makes the Italian system for combating crime more robust as regards the administrative measures aimed at preventing the penetration of illicit and Mafia capital in the legal economy.

Among the innovations introduced with this Law, it is worth mentioning a new measure applicable to companies (called "collaborative prevention", Art. 94-*bis* of the Anti-Mafia Code), inspired by the logic of cooperative compliance.

This tool is intended to counter attempts of mafia infiltration through forms of public control on companies with varying severity (from reporting obligations to the adoption of compliance programmes pursuant to the legislation on *ex crimine* liability of entities - Legislative Decree No. 231/2001).

The collaborative prevention, which is applied directly by the Prefect, is meant to strengthen the Italian system's ability to prevent upstream the emergence of operating conditions in companies (such as the presence of organised crime) that facilitate, and make it much more likely, that crimes and frauds damaging also EU's financial interests will be committed.

## Recovery Fund-working in progress

Spain has been the first Member State to send its country-report to the European Commission. It has already received positive feedback and a disbursement of 10 billion. There are currently four other countries awaiting the EU's "go-ahead" for the first tranche

of funds: Italy, France, Slovakia and Greece (information [here](#) and [here](#)).

## → Italy. First semestral report on the NRRR implementation

On 23rd December 2021, the NRRR's Steering Committee presented to the Italian Parliament the first semestral [report](#) concerning the ongoing implementation of the NRRR. According to the National Report, Italy has respected its commitment to achieve all the 51 goals and objectives planned for the end of 2021. For each goal, the Ministry of Economy and Finance, in its Central Service for the NRRR and the NGEU Mission Unit, carried out the control procedure on all the documentation necessary to certify compliance with the conditionalities set out by the EU. This administrative pre-verification process has been essential to ensure that the documentation submitted would be positively evaluated by the European Commission.

The report was then sent to the European Commission, that is now examining the text sent by the Italian government. Only after the EU's approval, Italy will receive the first tranche of EU Next Generation funds, amounting to 24,1 billion. The European Commission has two months to examine Italy's work on the expected targets starting from the day in which the Italian government sent the payment request to the EU ([December 30, 2021](#)). After the approval of the Commission, an opinion by the European Economic and Financial Committee is also expected. The institution has one month to finalize its decision.

## → What future for Poland's National Recovery Plan?

The European Commission has still not accepted the Polish National Recovery Plan (NRP). Since mid-October 2021, a dialogue has been held with the EC at the political and technical level to develop the final version of the National Plan for Recovery and Increasing Resilience. As part of the policy dialogue, several meetings have been held with the EC with the Ministry of Funds and Regional Policy leadership on justice-related reform. However, respect for the rule of law remains a bone of contention. At the end of October, EC Chairwoman Ursula von der Leyen made it a condition that the NRP should include a clear commitment by the Polish government to abolish the Disciplinary Chamber, end or reform the disciplinary system and begin the process of reinstating judges. The European Parliament also spoke out on the matter. In mid-November, five major groups in the European Parliament (the European People's Party, the Socialists and Democrats, Renew Europe, the Greens and the Left) asked the European Commission not to approve the Polish NRP until Poland had met all the conditions of the Recovery Fund Regulation. MEPs do not want Poland to get the money in exchange for a promise to abolish

the Disciplinary Chamber. In their view, the Polish government is not trustworthy, so Brussels must wait until the Chamber is abolished. To get the green light, a country must show that it has sound institutions which will monitor the spending of money from the Fund and the implementation of the so-called milestones, i.e. the main objectives of the policy for rebuilding Europe. It must also have a functioning justice system to prosecute possible fraud and corruption cases. According to MEPs, Poland does not have such institutions. In addition, the PiS government is openly undermining the key principle of the EU - the primacy of EU law over national law. (see [here](#)). The Law and Justice government has been promising for months that it will simply abolish the Disciplinary Chamber. However, the project of the announced "reform" of the judiciary still does not exist. Therefore, the CJEU has already ordered a financial penalty against Poland for the delay in freezing the Disciplinary Chamber: 1 million euros per day.

**→ Germany. Strong commitment to Europe by the governing parties in the coalition agreement**

The new government in Germany would like to contribute to a strengthening of Europe. The conference on the future of Europe should be used for reforms and lead to the development towards a federal European federal state. In addition, necessary treaty changes are to be supported, the European parliament - for example about the right of initiative - to be strengthened and a uniform European electoral law to be supported. Money laundering should also be combated more effectively within the EU in the future. For this purpose, not only the strategy to combat money laundering is to be coordinated between the federal government, the federal states and the EU, but an independent EU money laundering authority based in Frankfurt am Main is also to be set up. Bureaucracies are to be reduced by means of a "digitalization boost" to make the fight against fraud easier in this way.

The BETKOSOL team