

BETKONEXT

Better Knowledge for the Next Generations

BETKONEXT Newsletter n. 2/2024

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→ Luiss University has been awarded European funding for the [BETKONEXT project - Better Knowledge for the Next Generations](#), submitted by Professor of Administrative Law Aldo Sandulli under the EUAF (Union Anti-Fraud) Programme, overseen by the European Anti-Fraud Office (OLAF).

The project aims to explore thematic clusters focused on safeguarding the EU's financial interests under the umbrella term “coordination”. It will do so thanks to the state-of-the-art advancements presented in a previous Hercule III project, “Better Knowledge for Better Solutions (BETKOSOL)”.

Throughout the various phases of the project, BETKONEXT aims to explore the potential of institutional cooperation by examining the diverse normative contexts and operational collaboration practices.

The research, scheduled to last 24 months, will be conducted by Luiss University and will involve research experts from the universities of Leuven, Toruń, and Barcelona. The Italian Committee for Combating Fraud against the European Union (COLAF) will also collaborate in the scientific research activities.

→ **This is the second BETKONEXT newsletter.**

The newsletter will be published every quarter on the project website for the entire duration of the project.

If you no longer wish to receive the newsletter, please write to betkonext@luiss.it.

Last updates



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→ BETKONEXT course held in September.

The intensive one-week module of the course, entitled “Effective Management and Anti-Fraud Controls in the Use of EU funding instruments”, was held on site at the Luiss Campus in Viale Pola 12 in Rome between Monday, 9th September and Friday 13th of September. The course, under the academic coordination of Professor Aldo Sandulli, was developed within the framework of the CENTRAL EUROPEAN INITIATIVE, to which several members of the BETKONEXT research group contributed between June and September.

The aim of the course was to illustrate to numerous Balkan officials the functioning of the system for protecting the EU’s financial interests from the perspective of the instruments available in the EU and Italy. The course was for 18 representatives, with 3 public-sector officials from each Western Balkan country.

The course covered various topics from a cross-sectional perspective. Lectures on aspects of administrative law were complemented by others focusing on the criminal and EU law dimensions of the issues.

Several institutional meetings were held. These regarded the Italian Ministry of Foreign Affairs and International Cooperation, the Italian Court of Auditors, and relations between the EPPO (European Public Prosecutor’s Office) and the Italian General Prosecutor’s Office of the Court of Auditors, as well as ANAC, the Italian National Anti-Corruption Authority.

During the week, the participants visited COLAF – The Anti-Fraud Coordination Service (Italian AFCOS) and, at the closing ceremony, attended the keynote speech by Cruciano Cruciani, Coordinator of the Technical Secretariat of the AFCOS.

→ The first BETKONEXT working paper is now available!

BETKONEXT’s first working paper on “The Institutional ‘Constellation’ for the Protection of the EU’s Financial Interests” has been completed and is now



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available on the [website!](#)

News flash

→ General Court Judgment in Case T-386/19, *CQ v Court of Auditors*

In its first ruling on allegations of impropriety against a former ECA member, the EU's Court of First Instance (CFI) has ruled on financial consequences for a former ECA member. In the case at hand, *CQ* was reimbursed for various expenses and provided with a company car and driver as a member of the European Court of Auditors. The European Anti-Fraud Office (OLAF) was informed that the ECA had received information about a number of serious irregularities allegedly carried out by this Member, which may have resulted in undue expenditure from the EU budget.

The ECA adopted a decision establishing a financial claim against *CQ* and ordered its recovery following an OLAF investigation. *CQ* paid the amount requested by the Court of Auditors, at the same time bringing an action before the General Court of the European Union for that decision to be annulled and for compensation for the non-pecuniary damage allegedly sustained.

In case T-386/19, the Court of First Instance found that the investigation conducted by OLAF showed no irregularities and that the decision of the Court of Auditors to recover certain sums was sufficiently reasoned and well founded. With regard to the merits of the recovery decision, the Court concluded that, although five years had elapsed between the facts of the case and the establishment of the existence of a financial entitlement, most of these were not time-barred since the Court of Auditors was only able to establish them after OLAF's investigation was concluded. The Court also confirmed that a significant proportion of *CQ*'s meetings with politicians were not related to his duties as a member of the Court of Auditors and therefore found that the expenses incurred in connection with those meetings were irregular. Nevertheless, deeming that a very limited number of claims were time-barred and that certain mission and representation expenses and costs for the driver were legitimate, the Court annulled the recovery decision.



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The General Court dismissed CQ's claim for non-patrimonial damages. The Court found that CQ had failed to establish that the damage allegedly suffered was the direct consequence of an act attributable to the Court of Auditors. Consequently, one of the conditions for the non-contractual liability of the European Union, namely the unlawfulness of the conduct alleged against the EU institution, was not satisfied.

→ Is the EU planning to block funds to Slovakia?

In its annual [Rule of Law Report](#), published in July, the EU recommended Slovakia take a number of measures to ensure that the rule of law, severely undermined by some serious shortcomings in the legal system, is upheld.

What seems to have triggered the EU's reaction towards Slovakia is a reform of its criminal law passed by the Slovak Parliament in February 2024. The changes to the Criminal Code aim to reduce penalties and limitations for serious crimes and to abolish the Special Prosecutor's Office, which investigates the most serious cases of corruption, extremism, and terrorism.

It is likely that the EU plans to activate the [conditionality mechanism](#) in a manner not dissimilar to the case of [Hungary in 2022](#). As mentioned in [Deliverable n. 1.3 of BETKONEXT](#), Regulation 2020/2092 on the general regime of conditionality for the protection of the EU budget establishes a new legal instrument to protect the financial interests of the EU from violations of the rule of law.

What is going to happen to Slovakia? Stay tuned!

→ Irregularities in Spanish public procurement are on the rise

The number of cases across Spain increased by 18% in 2024.



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Catalonia, in particular, is the Spanish autonomous community with the highest number of complaints regarding irregularities in public procurement procedures.

According to data reported by the *Oficina Independiente de Regulación y Supervisión de la Contratación* – the Independent Bureau for the Regulation and Supervision of Procurement attached to the Ministry of Finance – its anti-fraud office handled more than 31% of the complaints filed in Spain as a whole.

The increase in complaints concerning suspected irregularities in public procurement is a growing trend in Spain.

In 2023, the authorities responsible for combating corruption at the national, regional, and local levels – together with the National Anti-Fraud Coordination Service for the Protection of the Financial Interests of the European Union, recorded a total of 221 communications, reflecting an 18% increase on the previous year.

The main cause of complaints regarding fraud and/or corruption in public procurement is irregularity in tender documents or the awarding of contracts (almost 37% of the total).

The second most frequent cause (almost 20% of the total) relates to ‘corrupt practices’, which include, for example, conflicts of interest involving public officials connected with the tender process.

In third place are irregularities in the execution of contracts.

→ Poland has submitted second and third payment claims amounting to over €9 billion under the NIP

On 13th September 2024, Poland simultaneously submitted its second and third National Recovery Plan payment requests to the European Commission. The total payments from these two applications will exceed the previous amount, potentially reaching around €9.4 billion, which includes over €4.1



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billion from the grant component and more than €5.3 billion from the loan. The funds are expected to reach Poland later this year.

The funds obtained will be used for a wide range of purposes. The Ministry of Funds and Regional Policy observes that the largest investments will go towards the insulation of single- and multi-family dwellings, the modernisation and construction of railway lines, and Poland's food security.

The same pool of funds is also expected to support, among other initiatives, long-term care in county hospitals next year and to provide resources for cardiology and oncology hospitals. The funds will also be used for Polish wind farms in the Baltic Sea, the "Clean Air" programme, spatial planning, and railway lines (cf. for more <https://www.gov.pl/web/fundusze-regiony/polska-zlozyla-drugi-i-trzeci-wniosek-o-platnosc-z-kpo-na-40-mld-zl>).

The Deputy Minister of Funds and Regional Policy, Jan Szyszko, emphasised that "there is a race going on in Europe for investments from the NIP. A race that we entered this year from last place. Within a few months we have moved up nine places in this stakes. We have overtaken Sweden, Hungary, Spain, Germany, the Netherlands, Ireland, Finland, Austria and the Czech Republic.

We are still far from the leaders such as France, Denmark or Italy. However, with the pace we have imposed on ourselves this year and with the investments we are making, we can expect that in the foreseeable future Poland – despite the 2-year delay – will continue to climb in this European ranking and will soon jump to the top half of the ranking" (<https://globenergia.pl/nawet-40-mld-zl-z-kpo-polska-zlozyla-drugi-i-trzeci-wniosek-o-platnosc/>).

→ 5 billion euro from the Cohesion Fund to address the consequences of flooding in Poland

On 19th September 2024, on the initiative of Prime Minister Donald Tusk, a meeting took place between the heads of government of the countries affected by the floods and the President of the European Commission, Ursula von der



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Leyen. It was agreed that the EU would allocate €10 billion from the Cohesion Fund for the reconstruction of infrastructure damaged by the disaster, with half of this amount – €5 billion – designated for Poland.

The President of the European Commission expressed her sympathy for the affected countries and assured them they would not be left alone to deal with the damage. “Europe is with you and on your side. At this moment, we all need to unite to deal with the challenge. [...] These are extraordinary times, and such times call for extraordinary measures”, the head of the European Commission remarked.

In addition, the European Union will allocate resources from the Solidarity Fund to support the affected countries. These will be used to rebuild road and rail infrastructure (more: <https://www.gov.pl/web/infrastruktura/polska-otrzyma-5-mld-euro-ze-srodkow-europejskich-na-odbudowe-po-powodzi>).

→ Challenges in the establishment of the EPPO and national legislation. Some observations on the Italian case

The establishment of the EPPO brought with it the need for a comprehensive restructuring of the entire procedural system in Italy, particularly with regard to investigations and cooperation with foreign authorities on precautionary measures and evidence. These changes were implemented through Legislative Decree No. 9 of 2nd February 2021, entitled “Provisions for the adaptation of national legislation to the provisions of Council Regulation (EU) 2017/1939 of 12th October, 2017, on the implementation of enhanced cooperation regarding the establishment of the European Public Prosecutor’s Office (EPPO)”. The decree primarily seeks to incorporate into the Italian system the mandatory regulations imposed by Regulation (EU) 2017/1939 of 12th October 2017. Three years on since the legislative decree entered into force, it is now necessary to assess the outcomes of this overhaul, and particularly to determine whether the Italian legislator has responded to the EU’s requirements effectively.



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A useful resource for assessing the current situation is the study on the compatibility between national legislation and the EPPO Regulation, launched by the Commission in April 2022 and published in December 2023 ([available here](#)). It provides an analysis of the degree of compliance of national transposing measures. The reports indicate that, generally speaking, the Italian legislative restructuring is sufficiently compliant with the provisions of the aforementioned Regulation, with the exception of 13 provisions that were deemed to be partially or even wholly non-compliant. Specifically, Articles 17(1), 24(1), 30(1)(f), 42(2), and 43(1) were considered partially compliant, while Articles 25(6) and 39(2) were found to be entirely non-compliant.

In detail, the articles of the mentioned regulation focus, on the one hand, on the duration of the designation of the European Delegated Prosecutor and, on the other, essentially functional matters such as the reporting of criminal offences, the resolution of conflicts, and, lastly, the reopening of cases.

In summary, Italian national legislation is partially compliant with Article 17(1) of the Regulation as it establishes that the functions of the European Delegated Prosecutors (EDPs) are to be exercised for a maximum of 10 years, whereas the EPPO Regulation provides that EDPs are appointed for a renewable period of five years, with no limit on the number of renewals. Although this is not a highly significant point of conflict, the Italian legislator sought to grant a longer term by allowing an automatic double mandate.

Regarding the reporting of criminal offences, Article 24(1) of Regulation (EU) 2017/1939 states that “The institutions, bodies, offices, and agencies of the Union, and the authorities of the Member States competent under applicable national law, shall without undue delay report to the EPPO any criminal conduct in respect of which it could exercise its competence”. In contrast, the Italian legislation, summarised in Article 14 of Legislative Decree No. 9 of February 2, 2021, introduced a dual notification system, stipulating that the report is sent both to the EPPO and the National Prosecution Office and that the EPPO must confirm within 30 days that it will not proceed with the case, after which the national authority may continue its own investigation. Therefore, even without the EPPO’s confirmation that it will not proceed with the case, the national authority may begin its investigation after 30 days.



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The most contentious issue regards the transposition of Article 25(6) of the Regulation. This provision stipulates that a Member State must designate a competent authority to resolve conflicts of competence between the EPPO and national prosecutors. Article 16 of Legislative Decree No. 9 of 2nd February 2021 is deemed wholly non-compliant with the Regulation as it designates the Prosecutor General at the Court of Cassation as the authority responsible for resolving conflicts. However, due to the nature of their responsibilities, this individual cannot be considered a court or tribunal under Article 267 of the TFEU.

The final aspect, which is distinctly unfavourable, concerns the reopening of investigations. According to Article 39(2) of the Regulation, which allows for further investigations based on new facts unknown to the EPPO at the time of the decision and that come to light later, leading to the reopening of investigations based on these new facts, Italian legislation provides for no such provisions. In this context, it would indeed be prudent for the court to make a determination at the preliminary hearing. Consequently, in the light of the concerns expressed in the report, it may be concluded that this obligatory procedure could impede the competence and determinations of the EPPO.

The BETKONEXT team



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