

BETKONEXT

Better Knowledge for the Next Generations

BETKONEXT Newsletter No. 1/2025

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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 potential institutional cooperation by examining 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 on scientific research activities.

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

The newsletter will be published on a quarterly basis on the project website for the entire duration of the project.

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

Latest updates



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→ A seminar organised by the Polish Unit on the implementation of the PIF Directive

On 24 January, the Faculty of Law and Administration at Nicolaus Copernicus University in Toruń hosted an international seminar titled “Comparison and Further Information on the Implementation of the PIF Directive to Fight Fraud to the Detriment of the EU” as part of the BETKONEXT research project. The event addressed key issues related to the protection of the EU’s financial interests.

Leading scholars and practitioners offered insights into the complexities of implementing the PIF Directive across diverse legal systems. The seminar began with discussions on adapting domestic criminal law, led by Professors Nowak, Bojarski, and Dr Daško. Their analyses highlighted the challenges of aligning national frameworks with EU-wide objectives.

Attention then shifted to the AFCOS (Anti-Fraud Coordination Services), with contributions from Polish and Italian representatives examining the operational impact of the directive. The role of national law enforcement, particularly the Central Anti-Corruption Bureau, was also explored, underscoring the significance of national bodies in fraud detection.

Discussions highlighted both advancements and the ongoing legal, procedural, and institutional challenges in implementing the Directive, emphasising the need for greater cooperation between EU institutions and national authorities.

Ultimately, the seminar demonstrated that the PIF Directive is not merely a legal framework but also a crucial tool for safeguarding the EU’s financial stability. The BETKONEXT initiative exemplifies how cross-border collaboration fosters effective anti-fraud strategies through knowledge exchange and the sharing of best practices.



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News flash

→ Cross-border investigations and judicial cooperation in criminal matters

In *Court of Justice, Grand Chamber, 21 December 2023, Case C-281/22, G.K. and Others, ECLI:EU:C:2023:1018*, the Court of Justice of the European Union (CJEU) delivered its first interpretative ruling on Regulation (EU) 2017/1939 establishing the European Public Prosecutor's Office (EPPO). This judgment – considered a milestone as it concerns the centrepiece of the EPPO Regulation, i.e. the mechanism for cross-border cooperation – has unsurprisingly been at the centre of scientific debate in recent months.

The ECJ's intervention was necessary to clarify the scope of Article 31 of the Regulation, which provides only limited guidance on the procedural relationship between the European Delegated Prosecutor (EDP) leading the investigation and the EDP assigned to provide assistance, in order to achieve greater harmonisation of national regulations and the progressive transformation taking place in European criminal procedural law.

The case giving rise to this judicial clarification concerned the following facts: a German EDP responsible for investigating an alleged case of tax fraud affecting the Union's financial interests requested an Austrian colleague to conduct a search of premises connected to the suspects in Austria.

In accordance with the wording of Article 31(3)(1) and Recital 72 of the Regulation, no prior judicial authorisation was sought in Germany. It was assumed that a single authorisation, encompassing both the substantive and procedural aspects of the measure, would be obtained in Austria. As expected, the Austrian EDP secured judicial approval for the search warrant. However, the suspects promptly challenged the measure before the Higher Regional Court (*Oberlandesgericht*) of Vienna, arguing that the search violated the principles of



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necessity and proportionality. The appellate court raised the question of whether it was entitled to access the entire investigation file in order to assess these specific aspects of the case.

The European Court, called upon to rule, held that within the broader framework of judicial cooperation in criminal matters – and in the light of the principles of mutual trust and mutual recognition – the authority responsible for executing an investigative measure is generally not required to assess whether the issuing authority has complied with the substantive requirements of the decision authorising the measure to be carried out. Instead, the executing authority may limit itself to a formal review aimed solely at enabling the execution of the measure.

In practice, the European Delegated Prosecutor may go beyond this formal review only when there is reason to believe that the fundamental rights of the individual concerned have been infringed. In such cases, the Prosecutor may restrict the execution of particularly invasive investigative measures, namely those that interfere with the right of every individual to respect for their private and family life, home, communications, and property rights.

The Luxembourg Court explicitly classifies certain measures as severely intrusive, including searches of private dwellings, precautionary measures affecting personal property, and asset-freezing orders. For these types of measures, the Member State to which the EDP responsible for the case belongs is under an obligation to ensure that adequate and sufficient safeguards are provided under national law. These safeguards must enable a prior judicial review to verify the lawfulness and necessity of such interferences.

This reasoning gives rise to a “dual-track” system, whereby the procedural advantages afforded to EPPO cross-border investigations apply only in cases involving moderate interferences with fundamental rights and freedoms.



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It therefore appears that the Court, aware of the provision in paragraph 31(6), aims to enhance judicial cooperation based on the mutual recognition of judicial decisions to avoid resorting to the usual investigative tools already endorsed by the European system (the European Arrest Warrant and the European Investigation Order). Indeed, if the Court had ruled in favour of a double substantive review of the conditions, it would have completely undermined the cooperative purpose of the EPPO, given that the European Arrest Warrant and the European Investigation Order would have become far more effective from an investigative standpoint, involving substantial checks solely on the merits of the operational conditions rather than on the objectives.

Indeed, an interpretation of Articles 31 and 32 of the Regulation allowing a comprehensive review by the competent authority of the Member State where the EDP is assigned to provide assistance would create a system distinct from other instruments based on mutual recognition. Such an approach would be less efficient and detrimental to the goal pursued by the Regulation. This is especially true when considering the structure of the EPPO, which is conceived as a single office operating under the principles of judicial cooperation in criminal matters among Member States, founded on mutual trust and recognition.

Considering the increasing need to harmonise the EPPO's operational framework, it is safe to assume that the judgment will not be the final step in this development. Instead, it encourages, if not actually forces, all actors involved – be they the Commission, the EU legislator, national authorities in the Member States concerned, or the EPPO itself – to ensure a tangible follow-up to the judgment.

→ Strengthening Integrity in Education and Research: The Italian MUR Anti-Fraud Measures Manual 2.0

In early 2025, the Italian Ministry of Universities and Research (MUR) released the updated 2.0 version of the NRRP MUR Anti-Fraud Measures Manual, with the Italian title of “Manuale delle misure antifrode del PNRR

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MUR”. This example was selected to illustrate the evolution of management and control within the NRRP.

The revised manual replaces version 1.0, adopted by Directorate Decree No. 2 on 20 October 2023.

It comprehensively details the anti-fraud measures for projects under the MUR’s purview, as part of the framework of Mission 4 – Components 1 and 2 of the Italian National Recovery and Resilience Plan (NRRP). Mission 4 of the NRRP, dedicated to education and research, has two key components: Component 1 focuses on improving educational services from early childhood through university, while Component 2 facilitates the transition from research to enterprise.

The manual considers the regulatory changes in NRRP governance and outlines specific anti-fraud measures for the stakeholders involved in managing, reporting, and controlling NRRP MUR-financed projects. Its purpose is to prevent, identify, and address corruption, fraud, conflicts of interest, and double financing that may arise during the implementation of interventions under the MUR’s responsibility.

The manual is positioned as a dynamic tool within a broader framework of guidelines for NRRP interventions under the MUR’s authority, and it is subject to continuous development and potential updates.

After outlining the overarching anti-fraud strategy for the NRRP, the manual explores the detailed anti-fraud cycle, which includes prevention, detection, control, reporting, investigation, and cooperation with national and supranational bodies. It also emphasises the continuous fraud risk assessment process for NRRP interventions.

→ Poland to Establish a Security and Defence Fund Using NRP Resources

A Security and Defence Fund is to be set up as part of the Polish NRP

By the end of March, the Polish government plans to adopt a resolution to



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reallocate a portion of the funds from the National Recovery Plan to strengthen Poland's defence capabilities. The main goal is to establish a Security and Defence Fund (SDF) to support the modernisation of the defence industry, the expansion of strategic infrastructure, and the advancement of innovative military technologies. A total of PLN 30 billion has been designated for this purpose and will be made available through preferential loans.

The fund will be created by reallocating resources from the Green Urban Transformation Facility. Support will also be provided to local governments for dual-use investments, such as building roads and shelters. The new funds are also intended to support research on defence technologies and the production of national defence companies. The goal is to improve national security by modernising its defence capabilities.

The decision to establish the fund has been approved by the European Commission, ensuring that its implementation will comply with EU regulations on defence funding. The new funds aim not only to strengthen the military sector but also to contribute to strengthening the Polish economy (see more: <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/9757324,rzad-planuje-przyjac-uchwale-ws-przekierowania-srodkow-z-kpo-na-cele.html>).

→ Spain: Manuel Vitoria proposed to lead the independent whistleblower protection authority amid delays and implementation challenges

On 18 March 2025, the Spanish Council of Ministers decided to inform the Congress of Deputies of the proposal to appoint Professor Manuel Vitoria Mendieta as Chairman of the Independent Authority for the Protection of Whistleblowers.

(<https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2025/20250318%20referencia-rueda-de-prensa.aspx>).

Manuel Vitoria is a Professor of Political Science at Rey Juan Carlos University in Madrid and a recognised expert in analysing corruption and studying ethics in public administration.

The proposed candidate must appear before the Congress of Deputies in



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order to be ratified and thus be able to begin exercising his functions, in accordance with the procedure set out in Article 53 of Law 2/2023 of 20 February, which regulates the protection of persons who report regulatory infractions and the fight against corruption.

The authority expected to be headed by Villoria is responsible for protecting whistleblowers and ensuring compliance with the obligations set out in the Spanish whistleblowing law across the country. Once again, the considerable delay in the effective implementation of the mechanisms established by Law 2/2023 is striking. This law was already approved with significant delay, missing the deadline for transposing Directive 2019/1937, which led to the initiation of infringement proceedings by the European Commission; however, the transposition obligation was ultimately fulfilled.

The eleventh final provision of Law 2/2023 stipulates that the statute of the whistleblower protection authority must be approved within one year of its entry into force. After yet another delay, this requirement was finally met at the end of 2024 with the approval of Royal Decree 1101/2024 of 29 October, which formally adopts the Statute of the Independent Authority for the Protection of Whistleblowers.

The system implemented in Spain for transposing the Whistleblowing Directive is decentralised, enabling autonomous communities to create their own authorities responsible for protection and ensuring compliance with the obligations outlined in Law 2/2023 on whistleblowing. As a result, the provisions on whistleblower protection and the secure investigation of regulatory breaches outlined in Law 2/2023 have only been implemented in autonomous communities that have established their own dedicated authority, as the national authority is still being set up, as previously explained.

However, even in those autonomous communities, implementation of the law appears to be somewhat ineffective. Enforcement of its obligations has been minimal, whistleblower protection has been inadequate due to insufficient measures and unreasonable timeframes, and the law's sanctioning powers have not been exercised. In this regard, despite several well-known instances of retaliation and the failure of some public administrations to establish appropriate internal reporting channels, it is surprising that no sanctions have yet been imposed in Spain under Law 2/2023.



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On 12 March 2025, officials from the Anti-Fraud Office of Catalonia published a note on a widely read and influential Catalan blog, stating that this institution – the whistleblower protection authority in the autonomous community of Catalonia – is currently initiating sanctioning proceedings under Law 2/2023 throughout 2025. (<https://eapc-rcdp.blog.gencat.cat/2025/03/12/progressos-en-la-proteccio-de-les-persones-informants-a-catalunya-lactivitat-de-loficina-antifrau-de-catalunya-lourdes-parramon-i-alex-madariaga/>).

These delays in effectively implementing the mandates outlined in the Directive and its Spanish transposing legislation are difficult to justify, especially given the significance of this issue in combating fraud and corruption and in safeguarding the financial interests of the Member States and the European Union. The importance of effectively protecting whistleblowers to safeguard the EU's financial interests was clearly emphasised in the European Commission's July 2024 report on "Measures adopted by the Member States to protect the EU's financial interests - Implementation of Article 325 TFEU". (https://anti-fraud.ec.europa.eu/document/download/a79d93e5-off6-4260-98be-d70ebfd3f649_en?filename=pif-report-2023-measures-325_en.pdf). In the report, Spain presented the adoption of Law 2/2023 as its most significant advancement in the protection of the financial interests of the Union.

The BETKONEXT team



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