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Deliverable 2.3

Working paper

EU integration through the lens of financial interests: a comparative analysis from an Administrative and Criminal Law perspective

Drs Alessandro Nato, Camilla Ramotti, Rossella Sabia, Elisabetta Tatì [eds.]

Under the direction of Prof. Aldo Sandulli, Prof. Maurizio Bellacosa, Prof. Oscar Capdeferro Villagrasa, Prof. Maurizia De Bellis, Prof. Filippo Dinacci, Prof. Antonio Gullo, Prof. Cristina Fasone, Prof. Michele Panzavolta, Prof. Maciej Serowaniec, Prof. Marta Simoncini

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EU integration through the lens of financial interests: a comparative analysis from an Administrative and Criminal Law perspective

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Lead beneficiary:	LUISS University
Editors:	Dr. Alessandro Nato, Dr. Camilla Ramotti, Dr. Rossella Sabia, Dr. Elisabetta Tatì
Supervision and Coordination:	Prof. Aldo Sandulli, Prof. Maurizio Bellacosa, Prof. Oscar Capdeferro Villagrasa, Prof. Maurizia De Bellis, Prof. Filippo Dinacci, Prof. Antonio Gullo, Prof. Cristina Fasone, Prof. Michele Panzavolta, Prof. Maciej Serowaniec, Prof. Marta Simoncini

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Attributions

I. Structure of the Working Paper	Dr. Birritteri, Dr. Nato, Dr. Ramotti, Dr. Sabia, Dr. Tatì
II. Italy	
Part A: Issues of Administrative Law	
Pars. 1, 3, 5	Dr. Tatì
Pars. 2, 8	Dr. Ramotti
Pars. 4, 4.1, 4.2	Dr. Bontempi
Pars. 6, 7	Dr. Bevilacqua
Part B: Issues of Criminal Law	
Pars. 9, 9.1, 9.1.3	Dr. Ardizzone
Pars. 9.1.1, 9.1.2	Dr. Nigro Imperiale
Pars. 10, 10.1, 10.2, 10.3, 10.4, 11, 11.1, 11.2, 11.3, 12	Dr. Gerardi Virgili
III. Poland	
Part A: Issues of Administrative Law	
Prof. Maciej Serowaniec	
Part B: Issues of Criminal Law	
Dr. Natalia Daśko	
IV. Spain	
Part A: Issues of Administrative Law	
Prof. Oscar Capdeferro Villagrasa	
Part B: Issues of Criminal Law	
Dr. Noelia Betetos Agrelo	
V. Belgium	
Part A: Issues of Administrative Law	
Pars. 1, 2	Dr. Tatì
Par. 3	Dr. Ramotti
Part B: Issues of Criminal Law	
Dr. Krystina Bakhtina	
VI. Conclusions	Dr. Birritteri, Dr. Nato, Dr. Ramotti, Dr. Sabia, Prof. Serowaniec, Dr. Tatì

I. Structure of the Working Paper

In the framework of the BETKONEXT project, this report continues by identifying the potential and pitfalls of the EU legislative tools in place to ensure the protection of EU financial interests. More specifically, it provides and updates the background on the administrative and enforcement tools, especially if they have felt pressure under the NGEU and the new MFF. Moreover, consistently with the previous deliverable, this work examines the state of the art in the protection of the EU's financial interests through criminal law, particularly by focusing on the remaining transposition issues related to the PIF Directive (EU) 2017/1371, as well as on areas of non-compliance in national legislation with the European Public Prosecutor's Office (EPPO) Regulation (EU) 2017/1939.

The working paper will be divided as follows into two parts for each national case study (Italy, Poland, Belgium, Spain):

1. Identifying shared, comparable, and integrated administrative tools and procedures based on EU legislation that can foster integration and future harmonisation in the sector. A specific initial section is dedicated to updating data and information on the new structural funds for the 2021-2027 cycle and on the incidence of fraud and irregularities now that the National Recovery and Resilience Plans are advancing.

2. Analyses of the full implementation of the PIF Directive, seeking to understand what the most recurrent conformity issues in the selected MS are and trying to establish how implementation of the PIF Directive is interacting with the EPPO's work; a focus on the EPPO's work and experimentalism.

A similar structure has been followed throughout the entire working paper in order to facilitate comparison. In fact, each national case study addresses some transversal issues that emerged during the workshop held in Italy on 6 December 2024 and the Seminar held in Poland on 24 January 2025.

For example:

- It is relevant that, under the umbrella term 'cooperation', Administrative Cooperation Arrangements (ACAs) are an important instrument for OLAF to improve cooperation with investigative bodies and other partners in the fight against fraud. Based on the description of each National AFCOS (or the complexities of the systems of control and institutional coordination, as indicated by the results of from the BETKOSOL research), the working paper

explores the tools available for collaboration between administrations, including agreements between national administrations, existing networking, and memoranda of understanding among the AFCOS. In other words, is the National Anti-Fraud Coordination Services (AFCOS) a formal commitment under Regulation 883/2013, or does it play a key role in connecting the EU and the national legal system in the fight against fraud and irregularities affecting the EU's financial interests? If it is recognised that AFCOS can play an important role and be useful with regard to the complexity of the institutional constellation, although in perspective, improvements in Regulation 883/2013 may be needed.

- **Digital tools help, on the one hand, to facilitate the exchange of information** (which seems particularly relevant in Regulation 883/2013) and, on the other hand, to **concentrate controls where the greatest risk emerges**. Are there countries that can be considered models of best practice and can suggest a *modus* operandi for the European legal order (and vice versa)?

- **How the Member States populate the Irregularity Management System** (i.e., on what basis they enter suspected irregularities and suspected fraud) and the future of the so-called 'PACA' system (*Premier Acte de Constat Administratif ou Judiciaire* – the first acts from which fraud/irregularity can be deduced and thus trigger the alert). This point could be situated at the intersection of Administrative and Criminal Law. In fact, reporting suspected irregularities or fraud to the European Commission has its legal basis, regarding the financial planning of the European Union, in the specific regulations for each ESIF cycle. However, there is no one-size-fits-all interpretation of the PACA concept among the Member States. Thus, over time, a pattern of inhomogeneous behaviours has arisen precisely due to the different interpretations of the moment when cases of suspected irregularity or fraud can be considered detected, with consequent discrepancies in the timing of communication to OLAF.

- **The kind of accountability and responsibility, from a comparative perspective, of officials and civil servants for the management of public funds, including, of course, European funds.** For example, is there any space for the direct responsibility of public entities for the misuse of European funds?

- **How the correct transposition of the PIF Directive at the national level can affect the protection of the financial interests of the European Union**, considering that, based on the Directive, the identification of criminal offences affecting such fundamental interests is left to the Member States. Accordingly, any gaps or discrepancies with the provisions of the Directive may, on the one hand, result in areas of unjustified criminal irrelevance, thereby

weakening the level of protection, and, on the other, hinder the functioning of the European Public Prosecutor's Office, whose material competence is, as is well known, defined by reference to the PIF Directive.

- **To what extent has the adaptation, where necessary, to the EPPO Regulation been carried out in a timely and adequate manner at the domestic level**, both with reference to any changes in institutional structures and to the rules of criminal procedure, in order to ensure effective enforcement activity for the protection of the EU's financial interests – taking into account that, in the absence of EU criminal jurisdictional bodies and an EU criminal procedural code, the EPPO relies on national criminal jurisdictions and procedures?

In the light of the above, structural differences apparent from the national case study analysis go in the direction of deepening topics that the reviewers of this (D.2.3) and the first BETKONEXT working paper (D.1.3) observed for the peculiarities of each Member State, without jeopardising the effectiveness of the comparative analysis.

The working paper concludes with overall insights from the perspectives of European, administrative, criminal, and criminal procedural law.

II. Italy

Part A: Issues of Administrative Law

1. *Introduction*

In 2023, the Italian AFCOS (Committee to Combat Fraud against the European Union, COLAF) consistently worked to identify the key challenges related to the protection of the EU's financial interests, particularly concerning updates in Cohesion Policies (new MFF 2021-2027), the National Recovery and Resilience Plan (NRRP), and the proper implementation of the Irregularity Management System for reporting irregularities and fraud to the European Commission. Furthermore, as stated in the COLAF Annual Report, Italy is working to increase the protection of the EU's financial resources through both the digital tools available and the strengthening of national governance to prevent and address irregularities and fraud.

With specific regard to implementation of the NRRP, on 22 December 2023, the General Accounting Office - NRRP General Inspectorate (Ministry of Economy and Finance) adopted the new version of the General Anti-Fraud Strategy for the plan, updating and supplementing the version launched on 11 October 2022. In particular, the Strategy notes that, although there is central coordination by the NRRP Unit by the Presidency of the Council of Ministers (following the reform of the NRRP governance welcomed by the new government), this structure is operationally supported by the General Accounting Office's NRRP General Inspectorate. Nonetheless, the 'multi-level' system remains characterised by a decentralisation of the key implementation and control phases, with responsibilities divided between the central administrations responsible for the individual NRRP measures and the so-called implementing bodies. In this context, the General Accounting Office - NRRP General Inspectorate assumes, through the 'Network of Anti-Fraud Contact Points' (in which COLAF is also involved), a guiding role for all the administrative bodies involved, by providing indications, drawing up guidelines, and offering useful operational tools. However, it is the responsibility of each authority tasked with implementing NRRP measures to define its own downstream anti-fraud strategies to protect the resources allocated to the investments and reforms within its remit. They must also adopt any initiatives or actions necessary to ensure that these strategies produce

tangible effects in terms of both fraud prevention and prosecution, including by incorporating the content of their 'General Anti-Fraud Strategy' into their 'Sectoral Anti-Fraud Strategies'.

This passage suggests an absence of detailed provisions in Regulation (EU) 2021/241 regarding the protection of the EU's financial interests – as is indeed the case – and the complexity of the control activity at the national level (see BETKOSOL D.7, 2022). It thus confirms the merely steering function of specialised central administrations and highlights the even more urgent need for coordination and cooperation among countries, administrations, and investment and funding streams (see BETKONEXT D.1.3, 2024).

COLAF's 2024 Annual Report highlights an increased attention to specific risks of irregularities and fraud in the light of the ongoing allocation of the plan's investments. As more resources are being spent and more controls carried out, the risks associated with expenditure are becoming clearer and more serious. The General Accounting Office is gradually integrating the "Guidelines for carrying out of the control and reporting activities of the NRRP Measures falling within the competence of the central administrations and implementing bodies" (Circular No. 30 of 11 August 2022, see BETKOSOL D.6, 2022) with Thematic Appendixes. These include, for example, anti-money laundering (Circular No. 27 of 15 September 2023, "Detection of beneficial ownership pursuant to Art. 22 par. 2 lett. d) Reg. (EU) 2021/241 and communication to the Financial Investigative Unit of suspicious transactions by the Public Administration pursuant to Article 10 of Legislative Decree No. 231/2007") and conflict of interests (Circular No. 13 of 28 March 2024, with two focuses: "The prevention and control of conflict of interests pursuant to Art. 22 Reg. (EU) No. 2021/241", and double funding (Circular No. 13 of 28 March 2024, "The duplication of funding pursuant to Art. 22 para. 2(c) Reg. (EU) No 2021/241").

For all these reasons, the Italian section of this Working Paper addresses the following topics, in accordance with the general framework established for this comparative study and drawing on the input from the workshop held in L'Aquila in December 2024, as well as the seminar organised in Toruń in January 2025.

Firstly, it provides an update on the funding received by the EU and spent by the Member States, highlighting changes and complementarity in governance for managing the ESIF, alongside the implementation of the NRRP.

Then, it offers a critical analysis of the Italian AFCOS, highlighting the advantages and disadvantages of the model as presented in the previous working paper and in the light of

national differences across Europe. While, on the one hand, the vocation of the AFCOS for coordination tasks has its *raison d'être* in the national system (due to the complexity of control activities and the related governance), and considering its establishment in the 1990s (before OLAF was established), on the other hand, the lack of legal personality and the absence of autonomous investigative power, as well as its placement within the Presidency of the Council of Ministers, can diminish its role as a single contact point for more operational tasks.

Thirdly, there are some new developments to report regarding the NRRP. The Italian COLAF, whose functions were also extended to the NRRP by Decree-Law No. 19 of 2 March 2024 (see BETKONEXT D.1.3, 2024), published two important documents in September 2024, dedicated, among other things, to anti-money laundering, criminal infiltration, double founding, and conflicts of interest.

Fourthly, with a Resolution of 22 October 2019, the Italian AFCOS approved the 'Guidelines on the modalities of communication to the European Commission of irregularities and frauds to the detriment of the European budget' and its Annexes (see BETKOSOL D.1, 2021). As of 2019, these Guidelines have not been updated. However, there are some elements that lead the observer to imagine that they will be updated soon. Moreover, some problems with filling in the IMS are mentioned in the 2024 COLAF Annual Report, which raises the unresolved issue of the legal definition of "First administrative or judicial report" ('PACA') in the European landscape.

Fifthly, as anticipated in the previous BETKONEXT Working Paper (D.1.3) and following an important judgment by the Constitutional Court in 2024, Italy is reforming the National Court of Auditors, the constitutional body responsible for ensuring the fair management of both national and European public resources through its control and judicial functions. At stake is also the regime applied to the administrative and public accounting responsibilities of public managers, as well as its linkage with the performance cycle and evaluation, which are the subjects of the previous working paper. These topics must be addressed in order to allow new standards to emerge for the protection of the EU's financial interests in the country and to further fuel the comparative study.

Lastly, updates on the involvement of digital tools in control activities and the analysis of the risk-oriented approach – especially regarding controls on individuals and enterprises – will be provided. These are essential tools for simplification and support to foster coordination and cooperation, primarily based in the sector on the exchange of information.

2. *Updates on ESIF 2021-2027 and the incidence of irregularities and fraud affecting the NRRP*

Through its regional development policy, the EU aims to foster economic, social, and territorial cohesion by reducing disparities among the various regions of its Member States. To achieve these objectives, based on agreements concluded with individual Member States and in accordance with shared regulations, the Union allocates specific financial resources within a seven-year programming cycle. These funds complement the national resources made available by the Member States themselves (for more details, see Camera dei deputati, 2024).

During the 2014-2020 programming period, Cohesion Policy was implemented through five European Structural and Investment Funds (ESIFs):

i) the European Regional Development Fund (ERDF), which promotes balanced development across the EU's regions
ii) the European Social Fund (ESF), which supports employment projects throughout Europe and invests in the continent's human capital
iii) the Cohesion Fund, which assists Member States with a gross national income per capita below 90% of the EU average (Italy did not benefit from this)
iv) the European Agricultural Fund for Rural Development (EAFRD), which addresses specific challenges faced by rural areas in the EU
v) the European Maritime and Fisheries Fund, which supports sustainable fishing practices and helps coastal communities diversify their economies, thereby improving the quality of life in Europe's coastal regions

For the 2021-2027 programming period, the EU has allocated €392 billion to support its Cohesion Policy. This policy is implemented through specific funds, which include:

i) the European Regional Development Fund (ERDF), which aims to correct major regional imbalances by supporting the development and structural adjustment of regions lagging behind and facilitating the conversion of declining industrial regions (Article 176 TFEU)

ii) the Cohesion Fund, which provides financial contributions for environmental and trans-European network projects in transport infrastructure (Article 177 TFEU). It is available to Member States with a gross national income per capita of less than 90% of the EU-27 average. In the 2021-2027 period, eligible countries include Bulgaria, Czech Republic, Estonia,

Greece, Croatia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovakia, and Slovenia; Italy is not among the beneficiaries

iii) the European Social Fund Plus (ESF+), the EU's primary instrument for investing in people. It supports the implementation of the European Pillar of Social Rights, fosters employment, and promotes a fair and socially inclusive society

iv) the Just Transition Fund, which constitutes the first pillar of the Just Transition Mechanism and aims to achieve EU climate neutrality by 2050

Additionally, among the European funds supporting the 2021-2027 Cohesion Policy is the European Maritime, Fisheries, and Aquaculture Fund (EMFAF). This fund promotes sustainable fishing and aquaculture, contributes to the restoration and conservation of aquatic biological resources, fosters the blue economy in coastal, insular, and inland areas, supports the development of fishing and aquaculture communities, and aids international governance for safe, secure, clean, and sustainably managed seas and oceans.

In this context, the Partnership Agreement between the EU and Italy, approved on 19 July 2022, establishes the strategic framework and policy objectives guiding interventions financed by the European Cohesion Funds for the 2021-2027 programming cycle. A total of approximately €43.1 billion of EU resources has been allocated to Italy, with over €42.7 billion specifically dedicated to promoting economic, social, and territorial cohesion, of which more than €30 billion are directed to less-developed regions. Including the allocation for the EMFAF (€518.2 million), Italy has secured EU funding for approximately €43.6 billion. Furthermore, national co-financing resources bring the total financial resources programmed in the Partnership Agreement for the 2021-2027 period to over €75 billion.

The governance of cohesion funds evolved with the introduction of Regulation (EU) 2021/1060, which establishes common rules for EU funds under shared management for the 2021-2027 programming period and defines a Common Strategic Framework for the funds.

The regulation mandates that funding interventions are to be concentrated on a limited number of common thematic objectives to promote a Europe that is (1) smarter, (2) greener, (3) more connected, (4) more social, and (5) closer to its citizens.

Additionally, it introduces simplifications and reduces administrative burdens on managing authorities compared to the 2014-2020 programming period while maintaining an adequate level of legality and regularity in operations and expenditure. Among the most significant simplification measures is the enhancement of Simplified Cost Options (SCOs),

which link financial transfers to performance, combining procedural streamlining with verifiable implementation outcomes in terms of results and deliverables.

Regarding resource programming, the Italian Partnership Agreement establishes ten National Programmes (NPs), in line with the European Commission's recommendation to reduce their number compared to the previous cycle. The proposed NPs include: Education and Skills; Research, Innovation, and Competitiveness for the Green and Digital Transition; Security for Legality; Health Equity; Inclusion and the Fight Against Poverty; Youth, Women, and Employment; Metro Plus and Southern Medium-Sized Cities; Culture; Capacity for Cohesion; and the Just Transition Fund (for more details, read Camera dei deputati, 2024).

In addition to these measures, Decree-Law No. 60 of 4 May 2024, converted with amendments into Law No. 95 of 6 July 2024, aims to accelerate and enhance the implementation of interventions financed under the 2021-2027 Cohesion Policy.

The decree promotes complementarity and synergy between European Cohesion Policy interventions and investments under the Cohesion Agreements and the Recovery and Resilience Plan within the Next Generation EU framework. By defining a national regulatory framework to accelerate implementation and improve efficiency, it focuses on strategic areas agreed upon with the European Commission, including water resources, infrastructure for hydrogeological and hydraulic risk mitigation, environmental protection, waste management, transport and sustainable mobility, energy, and support for sustainable development and business competitiveness, as well as digital and green transitions. A result-oriented approach is adopted to enhance the effectiveness and impact of co-financed priority interventions (for more, see https://www.programmagoverno.gov.it/media/i23jhstr/focus-dl-60-2024.pdf).

At 31 December 2024, regarding the total resources allocated under the Structural Funds for Italy, the implementation progress stands at 16.81% in terms of commitments and 4.59% in terms of payments. These figures include both the EU and national contributions to the respective programmes (for further details, Ministero dell'economia e delle finanze, 2024).

Today, with regard to cohesion funds directly allocated by Italy – amounting to €6.4 billion for the 2021-2027 programming cycle – monitored payments have reached €610.7 million, covering over 2,000 projects. Among these, completed projects constitute 2% of the total, monitored projects 1%, ongoing projects 95%, and non-initiated projects 2% (see here).

Significant progress has also been made under the National Recovery and Resilience Plan (NRRP) in achieving key milestones and targets. All sixty-seven target objectives – comprising

thirty-two targets and thirty-five milestones – were successfully met within the established deadlines. Since the NRRP's implementation began, a total of 337 target objectives have been achieved. At the end of 2024, Italy submitted a request to the European Commission for the seventh NRRP payment tranche, amounting to €21,010,535,785.00, which includes an advance of €2,761,290,723 (for data, read here).

Within this framework, Article 3 of Decree-Law No. 19 of 2 March 2024, converted into Law No. 56 of 29 April 2024, introduces additional urgent provisions for NRRP implementation. Specifically, paragraph 1 strengthens the unified strategy for preventing and combating fraud and other irregularities affecting funds linked to the National Recovery Plan, the 2021-2027 cohesion policies, and related national funds. It extends the functions established under Article 3(1) of Presidential Decree No. 91 of 14 May 2007, which regulates the Committee for the Fight against Fraud and Other Illegalities, expanding its scope to include the National Recovery Plan. These functions are assigned to the Committee to Combat Fraud against the European Union (COLAF) under Article 54(1) of Law No. 234 of 24 December 2012.

Paragraph 2 of the same provision details additional responsibilities of the Committee, including:

i) requesting information on anti-fraud and anti-corruption measures adopted by institutions, bodies, and entities;
ii) promoting and overseeing the implementation of memoranda of understanding under Article 7(8) of Decree-Law No. 77 of 2021;
iii) assessing, based on collected information, whether regulatory or policy adjustments should be proposed to the competent authorities or the Steering Committee established under Article 2 of Decree-Law No. 77 of 2021;
iv) conducting studies, including evaluations of the effectiveness of anti-fraud and crime prevention measures (for more details, see Presidenza del Consiglio dei ministri, 2024).

Further insights into Italy's anti-fraud strategy for the NRRP are provided in the 2024 report of the Italian Court of Auditors, which dedicates a specific section to this issue (Corte dei conti, 2024). The Court emphasises the need for all central administrations responsible for financial resource management to complete the establishment of an "Operational Group for the Self-Assessment of Fraud Risk" and finalise the fraud risk assessment process. A positive step

highlighted by the Court is the development of the "NRRP Fraud Risk Assessment Tool" by the NRRP Inspectorate-General, which has been instrumental in guiding internal risk assessments within individual administrations.

Additionally, the Court suggests that a comparative review of self-assessment tools across administrations could facilitate the sharing of best practices, improve risk assessment processes, and aid in the development of Action Plans. This would strengthen control mechanisms across various sectors where specific risk factors require mitigation. A key component in identifying and monitoring fraud risks is the implementation of a red flag system that each authority must integrate into its sector-specific strategy. However, the Court notes that this requirement has not been widely implemented and recommends that authorities should promptly align their strategies by adopting a comprehensive system of risk indicators tailored to their respective areas of intervention.

A critical tool for recording and monitoring suspected or confirmed irregularities is the Register of Controls, which is to be integrated into the Re.gi.s. information system. However, the Court observes that while this Register is currently operational for performance reporting – particularly for monitoring milestones and targets – it does not yet feature a standardised model for tracking expenditure controls. The General Inspectorate for the NRRP has yet to develop such a model for administrative use. The Court remarks the importance of extending Re.gi.s. functions to include standardised templates for recording control activities, their outcomes, and the detection of suspected or confirmed fraud, irregularities, reports to competent authorities, and financial recoveries following corrective actions. As expenditure increases, enhancing reporting and monitoring mechanisms will be increasingly fundamental.

3. *Control activity and institutional coordination: a suitable combination for protecting the EU's financial interests? A critical analysis of the Italian AFCOS model*

The results of the AFCOS Mapping Exercise 2023 questionnaire (a comparative analysis from data collected in 2016) reveals a substantially 'patchy' picture of AFCOS structures across Europe, referring to several factors, such as the number of staff members available, the location of the office in the national administrative structure, the powers attributed to them, the level of cooperation with other national authorities and other AFCOS, involvement in the drafting national anti-fraud strategy, the level of involvement in the flow of irregularity/fraud of irregularities/fraud through the IMS system, operational cooperation with the EPPO, and

active participation in the Recovery and Resilience Facility (RRF) management process (Presidenza del Consiglio dei ministri, 2023, 73).

The Italian one numbers among these. Member States autonomously decide where to best place the AFCOS within their national administrative structures. Italy, Romania, and the Slovak Republic (the National OLAF Office) set up a specific service within the Prime Minister's/Government Office. However, unlike Romania and the Slovak Republic (which have also been more recently appointed), COLAF has no direct investigative authority; its function is limited to coordination. This can be considered a limitation, especially for more effective interaction with OLAF.

On one hand, the vocation of the Italian AFCOS for coordination tasks has its *raison d'être* in the national system, considering the variable geometry of control activity and the establishment of COLAF in the 1990s (even before OLAF was established). It should be considered a 'sorting' point, with its value even if just for a mere 'communicative' scope. It should be clear what the contact point and communication channel between European and national authorities are for the protection of the EU's financial interests. COLAF should act as a 'logistical centre' and sort communications along the institutional chain, towards both the top and the bottom. The fact that COLAF operates within the Presidency of the Council of Ministers appears to align, for example, with high-level governance for NRRP implementation. Regarding low-level governance, when the NRRP was first implemented – in the absence of a more consolidated administrative structure and governance as provided – for example, for ESIFs (management and audit authorities, national and regional operative plans, etc., constituting the subject of specific negotiations with the European Commission through a partnership agreement), the role of networking among institutions and the birth of different horizonal agreements between administrations was very important (see BETKOSOL D6, 2022, but also here, for a reference to the "Network of anti-fraud contact points" for the scope of controlling the NRRP). The Italian AFCOS has this vocation in its DNA and, in fact, it has also been involved in the anti-fraud contact points network, almost as a structure with its own legal personality or, in any case, a distinct identity and, of course, a specific role (considering the provisions in Regulation EU 2013/883).

Critically, on the other hand, the lack of legal personality and autonomous investigative power, as well as its placement within the Presidency of the Council of Ministers (considered a limitation), can diminish its role as a single point of contact for more operational tasks. In

fact, control activities, both for preventive and repressive purposes, should be as independent as possible.

It should be noted that Article 12a, Regulation (EU) 2013/883 asks AFCOS to facilitate "effective cooperation" but, at the same time, to support "exchange of information", including information of an "operational nature", with OLAF. In fact, where appropriate, and in accordance with national law, the anti-fraud coordination service may be regarded as a "competent authority" for the purposes of the same Regulation (i.e., law enforcement authorities). In the absence of its own legal personality, COLAF cannot be considered a competent authority for the purposes of the regulation. On the contrary, the administrations that are part of this structure, such as the *Guardia di Finanza,* can perform this role.

Consequently, apart from the fact that COLAF has been appointed as the national contact point for Italy, the very relevant and effective role of the *Guardia di Finanza* and other national competent authorities in the sector during investigations concerning fraud affecting the EU's financial interests cannot be overlooked (notably, the central core of the COLAF structure is indeed represented by a special unit of the Financial Police). OLAF can directly interact with these authorities.

Therefore, in this regard, the Italian AFCOS loses its central role. Nonetheless, it is in charge, with the support of the special unit of the Financial Police, of the IMS, and it plays an important 'diplomatic' role by attending COCOLAF and GAF meetings (see BETKONEXT Project D.1.3 for a description of these meetings from a European law perspective).

COLAF emphasised its proactive role in the fraud risk management process during the 10th AFCOS Group meeting (October 2023), which was held with the aim of preventing, detecting, and penalising offences detrimental to the EU's financial interests. With specific reference to the implementation of Article 7.3a of Regulation 2013/883 regarding cooperation with the EPPO and the effectiveness of OLAF investigations, it highlighted the importance of acquiring and using information on banking transactions during the administrative investigation stages. In this context, it reiterated that Italy was the first country to identify, at the national level, the competent authority – the *Guardia di Finanza* – responsible for accessing bank register data in the framework of administrative investigations conducted by OLAF, particularly concerning the assistance and cooperation provided.

4. *News on the NRRP side: anti-money laundering and anti-terrorism, conflicts of interest, double founding*

The *Guardia di Finanza*'s Unit for the Prosecution of Fraud against the EU, in its capacity as Technical Secretariat of COLAF, whose functions were also extended to the NRRP by Decree-Law No. 19 of 2 March 2024, as observed, published two important documents in September 2024 (Presidenza del Consiglio dei ministri, 2024; Presidenza del Consiglio dei ministri, 2024).

4.1. *Measures for preventing and combating fraud and malfeasance to the detriment of the NRRP*

The first document is entitled "Measures for preventing and combating fraud and malfeasance to the detriment of the NRRP". This document contains an analytical overview of all the measures currently in place in national legislation that are useful for preventing and penalising fraud and other offences that may cause damage to the financial resources allocated by the EU under the NRRP, whether introduced specifically in relation to the NRRP or applicable in a general way to other sectors.

Among the measures listed in the document are:

a. The overall anti-fraud strategy for NRRP implementation

On 22 December 2023, the State General Accounting Office (Inspectorate General NRRP) issued a new version of the "General Anti-Fraud Strategy" for the NRRP, updating and supplementing the version launched on 11 October 2022.

At a general level, the underlying objectives of the Strategy are:

- to ensure that all public and private entities involved in the NRRP are committed to adhering to the general principles of integrity, objectivity and honesty and to guaranteeing high ethical and moral standards, as well as to adopting a policy of 'zero tolerance' towards wrongdoing, putting in place a robust control system aimed at preventing and detecting fraudulent activities and, should they occur, promptly rectifying their consequences
- to assess the main risks of fraud in the NRRP

- to identify vulnerabilities in existing control systems
- to ensure the involvement of all stakeholders (NRRP measure-holding administrations, external control bodies, institutional stakeholders, etc.), in particular by strengthening collaborative and coordinated actions

b. Anti-money laundering controls applied to the NRRP

With Circular No. 27 of 15 September 2023, the NRRP Inspectorate General of the State General Accounting Office issued a special Thematic Appendix concerning, among other things, the communication to the Financial Intelligence Unit (*Unità d'Informazione Finanziaria – UIF*) of the Bank of Italy regarding suspicious transactions by the Public Administration pursuant to anti-money laundering legislation. This legislation assumes a central role in preventing the risks of criminal infiltration in the use of NRRP funds, allowing for the timely detection of possible wrongdoing.

In fact, Article 10 of Legislative Decree No. 231 of 21 November 2007, as amended (the so-called anti-money laundering decree), establishes the duty of Public Administrations to notify the FIU of any suspicious transactions detected in the performance of specific activities.

c. Conflict of interest rules

In this field, mention may be made of:

- Article 6-*bis* of Law No. 241 of 7 August 1990, according to which: "The person in charge of the procedure and the holders of the offices responsible for adopting opinions, technical assessments, endoprocedural acts, and the final measure must abstain in the event of a conflict of interest, reporting any situation of conflict, even potential conflict"
- Article 53 of Legislative Decree No. 165/2001, "General rules on the organisation of employment in public administrations", containing provisions on incompatibility, accumulation of employment and appointments of public employees

- Legislative Decree No. 39/2013, "Provisions on the incompatibility and incompatibility of appointments in public administrations and in private entities in public control...", which precisely defines various cases of incompatibility and incompatibility of appointments in public administrations
- Presidential Decree No. 62/2013, "Regulations containing the code of conduct for public employees"

d. Anti-corruption and transparency safeguards

The current regulations on the prevention and penalisation of corruption and illegality in the public administration, which are based on Law No. 190 of 6 November 2012 and have their main and strategic point of reference in the National Anti-Corruption Authority (*Autorità Nazionale Anticorruzione* – ANAC), also represent an important safeguard against the risks of fraud and other illegal activities to the detriment of the financial resources of the NRRP.

In its Resolution No. 7 of 17 January 2023, concerning the National Anti-Corruption Plan 2022, ANAC pointed out that the substantial financial flow related to the NRRP and the regulatory provisions introduced to support the speedy implementation of many interventions "require the strengthening of public integrity and the planning of effective corruption prevention measures to avoid that the results expected from the implementation of the NRRP are thwarted by corruptive events, thus not affecting the effort aimed at simplifying and speeding up administrative procedures".

The provisions concerning public contracts (currently contained in Legislative Decree No. 36 of 31 March 2023) also perform the fundamental function of prevention and deterrence with respect to the risks of fraud and corruption relating to projects and investments financed using NRP resources. Of particular importance are the general principles and their corollaries set out in Articles 1-12, in which numerous and repeated references are made to the canons of legality, transparency, competition, good administrative action, efficiency and effectiveness, impartiality, non-discrimination, publicity, good faith and the protection of trust, concretely expressed in the procedural rules specified in the aforementioned provision.

e. Prevention of criminal infiltration

The provisions relating to the so-called anti-mafia prevention system, which essentially focus on the anti-mafia documentation and, in particular, on the anti-mafia information, the application of which is delegated to the anti-mafia authorities, are undoubtedly included among the safeguards of legality useful for preventing and counteracting unlawful acts detrimental to the financial resources associated with the NRRP. This is especially important for evaluating the economic subjects that access tenders, concessions, or other benefits connected to the NRRP funds. The so-called anti-mafia prevention system, which essentially focuses on anti-mafia documentation and, in particular, on anti-mafia information, has its application delegated to the Prefects, pursuant to Legislative Decree No. 159 of 6 September 2011 (the so-called Anti-Mafia Code).

4.2. The Main Fraud Risk Indicators established in the NRRP

The second document is entitled "The Main Fraud Risk Indicators in the NRRP" and provides a comprehensive monitoring of the so-called anomaly indicators developed by various Italian institutions to target control actions on situations that require in-depth investigation.

I. Anomaly indicators identified by the *Guardia di Finanza*

With the support of the Guardia di Finanza unit seconded to the Department for European Affairs at the Presidency of the Council of Ministers, acting as the Technical Secretariat of COLAF, the Special Unit for Public Expenditure and Prosecution of Community Fraud of the *Guardia di Finanza* has prepared analytical 'checklists' containing specific risk indicators applicable to the disbursement of incentives. These indicators, through the ReGiS system, have been made available to all central and local administrations and to the implementing entities involved in the NRRP. This initiative allows them to enhance their capacity to identify anomalous situations that require further investigation.

In particular, as regards the sphere of the provision of incentives, the elements indicative of the possible existence of a risk situation have been identified in the following, separately for:

a. business life cycle of the economic operators

b. structure of the enterprise

c. business management mode

d. business communication systems

e. circumstances pertaining to the reliability of the subject and the credibility of the venture

II. Anomaly indicators developed by the FIU

The Financial Intelligence Unit (*Unità d'Informazione Finanziaria* – UIF) of the Bank of Italy has created some specific anomaly indicators to guide public administrations. These indicators are outlined in an ad hoc measure issued on April 23, 2018, which categorises them into three groups:

a. anomaly indicators related to the identity or behaviour of the person to whom the transaction is referred

b. anomaly indicators related to the manner of requesting or executing the transactions

c. sector-specific indicators:

(1) public procurement and contracts;

(2) public financing;

(3) real estate and trade.

5. *Irregularities and the first administrative or judicial report (PACA) in Italy. Forthcoming*

According to Regulation 2021/1060 (see Section 1 of this Working Paper for more details):

- 'irregularity' means any breach of applicable law, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the budget of the Union by charging unjustified expenditure to that budget (Art. 2(31)).

- ‘serious deficiency’ means a deficiency in the effective functioning of the management and control system of a programme for which significant improvements in the management and control systems are required (Art. 2(32)).
- ‘systemic irregularity’ means any irregularity, which may be of a recurring nature, with a high probability of occurrence in similar types of operations, which results from a serious deficiency, including a failure to establish appropriate procedures in accordance with this regulation and the Fund-specific rules (Art. 2(33)).

Annex XII of the same regulation provided detailed rules and a template for reporting irregularities, particularly in the IMS. According to Article 69(2)(12), Member States must ensure the legality and regularity of expenditures included in the accounts submitted to the Commission and take all necessary actions to prevent, detect, correct, and report irregularities, including fraud. During the previous funding period, the Commission adopted specific delegated regulations. Therefore, the legislative technique has changed with respect to the past. The following irregularities must be reported to the Commission:

(a) irregularities that have been the subject of a first written assessment by a competent authority, either administrative or judicial, which has concluded on the basis of specific facts that an irregularity has been committed, regardless of the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure;

(b) irregularities that give rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of fraud or other criminal offences, as referred to in points (a) and (b) of Article 3(2) and Article 4(1), (2), and (3) of Directive (EU) 2017/1371 and point (a) of Article 1(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests (1) for the Member States not bound by that Directive;

(c) irregularities preceding a bankruptcy;

(d) specific irregularity or group of irregularities for which the Commission submits a written request for information to the Member State following the initial reporting from a Member State.

Those exempt from reporting irregularities involve amounts below EUR 10,000 in contributions from the EU’s funds, except in cases where they are interlinked; situations where the irregularity consists solely of the failure to execute, in whole or in part, an operation

included in the co-financed programme due to the non-fraudulent bankruptcy of the beneficiary; cases voluntarily brought to the attention of the managing authority or the authority in charge of the accounting function by the beneficiary before detection by either authority, whether before or after the payment of the public contribution; and cases detected and corrected by the managing authority before inclusion in a payment application submitted to the Commission.

Member States must report irregularities within two months following the end of each quarter, either from their detection or as soon as additional information on the reported irregularities becomes available. However, they must immediately report any irregularities discovered or believed to have occurred to the Commission, indicating any other Member States concerned should the irregularities have potential repercussions outside their territory.

The information reported may be used solely for the purposes of protecting the financial interests of the Union, and particularly to perform risk analyses and develop systems that serve to identify risks more effectively.

At the national level for the IMS, the *Guardia di Finanza* Unit, serving as the Technical Secretariat of COLAF, offers guidance and technical support to users to ensure the system operates correctly, promptly, and uniformly.

In Italy, the Inter-ministerial Circular of 2007 and the related COLAF explanatory notes have led to a distinction in the first administrative or judicial report (PACA, in Italian *Primo verbale amministrativo o giudiziario*) between two levels:

- The administrative level, found in the first act created at the end of the evaluation by the decision-making bodies, based on the data and information from the initial challenge report, which was also drafted by the so-called "External Control bodies", such as the police forces
- The judiciary level – where it coincides in the ordinary proceeding with the request for prosecution or alternative proceedings, pursuant to Article 405 of the Criminal Procedural Code, in proceedings before a monocratic Court (in which the public prosecutor proceeds to summon to the court) with the issuance of a summons, pursuant to Articles 550 and 552 C.C.C. – (Presidenza del Consiglio dei ministri, 2019, 44; with respect to the links between administrative controls and criminal proceedings)

The Italian AFCOS approved the 'Guidelines on the modalities of communication to the European Commission of irregularities and frauds to the detriment of the European budget'

and its Annexes (see BETKOSOL D.1, 2021) with a resolution dated 22 October 2019. As of 2019 these Guidelines have not been updated.

In 2023, discussions with the European Commission focused on a question submitted to OLAF concerning its differing interpretation of the procedure used by the Italian Managing Authorities to remove from the IMS database conduct initially reported as irregularities but later classified as regular. Consequently, these authorities received additional guidance based on the 2019 Guidelines.

Furthermore, the *Guardia di Finanza* developed careful monitoring and control measures addressing the main issues raised by OLAF regarding how the forms were completed in the system, which subsequently resulted in the issuance of specific guidelines for the managing authorities and other relevant national bodies at the beginning of 2024.

In fact, the experience gained during the last few years of application has highlighted the need to formulate a set of guidelines for the managing authorities, particularly given the requests received from European institutions, such as OLAF, to improve the quality of the information in the IMS system. In this sense, the Special Unit of the *Guardia di Finanza* operating at COLAF sent specific guidelines to all managing authorities and other relevant administrations to improve the quality of the information in the IMS system (Document no. 0000221 of 11 January 2024. Among the topics that reflect the complexities of maintaining administrative control in the country (Part IV, COLAF Annual Report 2024):

- Correct drafting of the Special Communication in cases of impossibility to recover sums to be charged to the European Union
- Excessive use of generic codes in field 6.8 (‘TYPE OF IRREGULARITY’) and correct and consistent implementation of field 6.9 (‘MODUS OPERANDI’) of the IMS form.
- Excessive use of generic codes in fields 7.2 [‘REASON FOR CONTROL’ (why)] and 7.3 [‘TYPE AND/OR METHOD OF CONTROL’ (how)] of the IMS form

Currently, despite the expansion of COLAF’s responsibilities to include the NRRP, the IMS lacks PACA communications related to this specific plan, partly because Regulation (EU) 2021/241 does not mandate it, and the RRF represents a specific category of investments that is not comparable to ESIF

Within this context, and taking into account the new legislative technique outlined in Regulation 2021/1060 (which largely confirms the methods of reporting irregularities and fraud related to revenue and expenditure), COLAF announced during the 10th AFCOS Group

meeting that it is refining the systems for analysing and assessing fraud risks in the new European Financial Framework (see para. 1 of this section). The intention is to establish an ad hoc technical round table to update the national 'Guidelines' (2019) on communicating irregularities and fraud against the European budget (via PACA forms, as specified for the Italian system) to OLAF is outlined in Section 1.

6. *Administrative liability in public management: protect the EU's financial interest, guaranteeing the efficiency of public administrations*

Over the past five years, administrative liability has been central to several regulatory interventions that have altered its scope of application. These legislative interventions, which serve as a basis for reflection within the broader context of safeguarding the financial interests of the Union, have also influenced the structure of the control functions assigned to the Court of Auditors, significantly affecting the other aspect of liability, namely accounting. It is important to clarify from the outset that, although these two types of liability are intertwined by the jurisdiction of the Court of Auditors, they differ in certain aspects.

Given this circumstance, the protection of financial interests at the European level appears to be only indirect, as the mechanisms for (administrative or accounting) liability do not appear to be aimed at safeguarding European public resources, but rather national ones. Nonetheless, in compliance with the recently repealed Stability and Growth Pact, Member States are required to manage public resources in a sound and prudent manner to ensure the containment of public debt. In this context, administrative and accounting responsibility consists of remedial mechanisms, as they intervene after the unlawful act has been committed, therefore after the damage has been caused.

Scholars have argued that the foundation of administrative responsibility is rooted in the need to prevent and suppress illicit conduct by the administrators and personnel of public entities and organisations (L. Mottura, A. Monorchio, 2021). The elements constituting the liability in question can be traced back to a subjective element, namely the perpetrator's intent or gross negligence, and an objective element that includes unlawful conduct (either action or omission), the financial damage inflicted on the public administration, and the causal link between the harmful event and the unlawful conduct.

Therefore, while administrative responsibility protects public administration from any damage caused by those entrusted with the management of public resources (for example,

damage to its image), accounting responsibility is limited to those individuals ('public agents') assigned with the task of managing money, goods, or other public assets who have not fulfilled their related obligation of restitution.

Indeed, the connection between administrative liability and the jurisdiction of the Court of Auditors is set out in Article 103(2) of the Italian Constitution, which assigns the Court "jurisdiction in matters of public accounting".

The legislative reform that took place in 2020 has had an impact on the subjective element of administrative responsibility, reducing its 'scope'. The concrete effects of this reduction can only be evaluated when the 'modified' compensatory actions are subjected to the scrutiny of the courts. In particular, Article 21(1) of Decree-Law No. 76 of 2020 introduced the so-called *scudo erariale* (fiscal shield), which entails a procedural requirement to demonstrate the intention behind the harmful event as evidence of intent, with evident repercussions in terms of practice and feasibility. Scholars (albeit a minority figure) have noted the decline of the doctrinal and jurisprudential approach regarding contractual fraud or *adimplendo* (the will to perform the wrongful act) as sufficient for the existence of the subjective element. Additionally, the restrictive majority view interprets intent in a criminal law sense, meaning it considers not only the voluntariness of the action but also the effects it produces. The intent to defraud the treasury could be conflated with the notion of criminal intent, which encompasses all levels of intensity, particularly concerning so-called potential intent. Without this concept, some authors argue that accounting responsibility may risk being undermined (Cimini, F., & Valentini, 2022).

Article 21(2) of Decree-Law No. 76/2020 introduces a controversial innovation, abolishing fiscal responsibility for gross negligence, but this applies only to commission-based acts and for a limited period of time.

The rationale for this regulatory innovation lies in efforts to combat so-called 'defensive bureaucracy', including administrative managers' fear of signing documents, which slows down administrative procedures and undermines effective public administration.

The purpose of the 2020 reform was to facilitate the administration's actions during a time of severe operational difficulty by suspending fiscal responsibility for gross negligence, thereby avoiding defensive bureaucracy that would slow down the continuity of administrative action.

Regarding the questionable effectiveness of the codified means for pursuing this objective (namely, through the exclusion of gross negligence), some scholars have noted that the distinction between intent and gross negligence becomes blurred in the classification of unlawful conduct for the purposes of establishing liability, with significant repercussions on determining the applicable penalty.

For the Court of Auditors, determining whether a commission's conduct is marked by intent or gross negligence will certainly be challenging, given that the accounting procedure is primarily documentary in nature, and the public prosecutor lacks the investigative powers necessary for such a complex assessment, unlike in criminal proceedings.

The case law of the Italian Court of Auditors consistently recognises gross negligence in the contemptuous disregard of official duties by public employees (*ex multis*, Corte dei conti, Sez. I, No. 381, July 16, 2012, and Corte dei conti, Sez. II, No. 384, July 27, 2011. Accordingly, *Corte conti, Sez. giur. Abruzzo,* No. 372 of 27 March 2007). In a 2007 decision, gross negligence is defined as extreme indifference toward one's duties, representing maximum negligence and a deviation from the expected conduct related to one's tasks, while disregarding common rules of conduct and failing to meet a minimum standard of diligence (*Corte dei conti, Sez. giur. Abruzzo,* No. 372 of March 27, 2007).

Compared to the constitutional reform of 2012, which attributed new control functions to the Court of Auditors, characterised by jurisdictional forms due to the concrete and binding effects of the decisions made against the controlled administrations, the 2020 intervention certified the trend of progressively abandoning the account judgment, along with the related overlap of accounting responsibility in administrative responsibility (Guida, 2023).

The purpose, however, ought to have remained the same, namely, ensuring the protection of the budget as a 'public good' (cf. *Corte cost. No.* 184/2016) which recognises that the Court of Auditors has the specific function of safeguarding constitutionality as guardian of the legality and regularity of budgets (Buscema, 2022).

However, raising the aforementioned "fiscal shield" of accounting responsibility to cover cases of intent alone does not eliminate the uncertainty between the meaning of intent and gross negligence, nor the associated degrees of liability that public officials face in their duties (Giomi, 2021).

According to some scholars, Article 21 of Decree-Law No. 76 of 2020, which – as already noted – 'suspends' gross negligence, places itself outside the framework established

by European regulations, namely Regulation (EU) 2021/241 on the Recovery and Resilience Facility, which requires more stringent control over the proper management of resources in the light of the significant economic-fiscal commitment made by the Union.

Another important aspect of the fiscal liability reform is found in paragraph 2 of Article 21, which establishes a limited time frame for the norm. However, this limitation undermines the objective of clarifying the administrative simplification provision, making it less achievable for a result-oriented approach to effective public administration.

Beginning with conversion Law No. 120 of 11 September 2020, up to the recent Decree-Law No. 202 of 27 December 2024, no subsequent regulatory intervention concerning the examined Article 21 has altered the substantial scope of fiscal responsibility but only its temporal aspect, currently extending the deadline to April 30, 2025 (as extended by Article 1, paragraph 9, Decree-Law No. 202 of 2024).

7. *The Constitutionality of the fiscal shield and the ongoing reform of the National Court of Auditors*

On the constitutional compatibility of Article 21(2) 2 of Legislative Decree No. 76 of 2020, the Constitutional Court intervened (ruling No. 132 of 16 July 2024), which 'saved' the provision concerning the temporary exclusion of administrative responsibility for gross negligence of those under the jurisdiction of the Court of Auditors. This regarded the particular economic and social context in which the pandemic had caused the prolonged closure of productive activities, resulting in enormous damage to the national economy and a significant loss of percentage points of the gross domestic product. The situation had obvious negative repercussions on social cohesion and the protection of rights. In other words, to overcome the severe crisis and revive the economy, the legislator deemed it essential that public administration operate without hesitation, rather than – due to its inactivity – becoming an obstacle to economic recovery. A similar argument must be considered valid for the extensions to the criticised provision made in the phase following the economic crisis caused by the pandemic.

The issues related to 'defensive bureaucracy' are likely to impede the implementation of the NRRP by delaying the disbursement of the allocated tranche of resources from the EU at the scheduled deadline. Compromising the implementation of the NRRP is equivalent to preventing the resumption of a path of sustainable economic growth and the overcoming of

certain economic, social, and gender gaps. On December 19, 2023, a new reform project regarding the oversight and advisory roles of the Court of Auditors, as well as accountability for public damage (A.S. 1621, commonly referred to as the Foti bill), was presented to the Chamber of Deputies. The reform proposal, which is still under parliamentary review, aims to further limit public liability, affecting the preventive aspect of the control function that has already been significantly reduced by Law No. 20, enacted on 14 January 1994.

Therefore, it appears necessary, at this point, to conduct a thorough review of the four articles that make up the 2024 legislative proposal.

Article 1 of the draft law proposes amendments to the existing legislation on administrative responsibility, which falls under the jurisdiction of the Court of Auditors (as outlined in Article 103 of the Italian Constitution). It also addresses preventive legality control, particularly regarding public contracts related to the implementation of the NRRP. In particular, the reform affects two types of responsibility:

- for registered approved acts, if the administrative act has passed the preventive legitimacy control of the Court of Auditors, public officials – also known as administrators – can no longer be held accountable for fiscal liability
- for conciliatory agreements, liability for gross negligence – without prejudice to liability for intentional misconduct – would be excluded if conciliation agreements had previously been signed in the mediation process or in court by representatives of public administrations

The rationale behind the legislative proposal is that limiting liability for gross negligence would help alleviate the pressure created by the high number of labour and tax disputes, thereby encouraging the adoption of mediation and judicial conciliation agreements. The proposed new formulation explicitly excludes liability for gross negligence, not only in cases involving the conclusion of conciliation agreements during mediation or in court by representatives of public administrations but also in situations concerning assessment procedures, adherence to mediation agreements, judicial conciliations, and tax transactions concerning tax matters. In these cases, liability is limited to actions and intentional omissions.

The reform aims to address an issue related to a type of ‘defensive bureaucracy’. Specifically, public officials who have the authority to sign these agreements often worry that they could face administrative actions questioning the validity of what was agreed upon up to

five years of finalising the agreement. Under the proposed reform, a liability action can only be initiated in cases of intentional damage through such agreements.

The 2024 bill will also establish a new quantitative limit on reintroducing liability for gross negligence after the time limit specified in Article 21(2) of Decree-Law No. 76 of 2020 has expired. In cases of damage due to gross negligence, the ability to reduce should be applied as specified, meaning that the liable party will bear part of the assessed damages or lost value as a direct consequence of their actions. The amount will be at least 150 euros and will not exceed the equivalent of two years' worth of gross economic compensation owed by the responsible party. Courts are required to exercise their discretion to reduce the penalty, limiting it to a maximum of two annual payments based on the perpetrator's income.

This intervention would restrict the court's jurisdictional power by requiring them to exercise it within a reasonable maximum limit. Additionally, as previously mentioned, the court's new limitation on the exercise of reduction is not applicable in cases where damage was caused intentionally or in instances of the agent's unjust gain.

Another significant aspect of the reform proposal under consideration is the introduction of a preliminary opinion by the Court of Auditors in an advisory capacity for all expenditure acts that fall outside the preventive legality assessment. Compliance with the opinion would constitute an exemption from any potential liability. In other words, the consultative activity produces a 'reassuring' effect, ensuring total lack of administrative liability for the manager or public official if they fully comply with the given opinion.

It is worth recalling here two significant opinions of the Court of Auditors.

Regarding the reassuring effect, the Court of Auditors had already expressed itself during the July 2020 hearing before the Senate of the Republic concerning the approval of Bill No. 1883, which contained Decree-Law No. 76 of 2020. Since then, the Court of Auditors has warned of the risk that the general reluctance of administrators to act in order to avoid falling into the net of liability for damage to the public purse, in the best (or worst) case scenario, would only be true to a minimal extent. This is because other factors contribute to the procedural incapacity of public administration, including legislative confusion, inadequate professional training, and insufficient staffing. Potential liability has, in fact, often induced administrators and the Court of Auditors to collaborate preventively to avoid unlawful conduct or has led administrators to resort to procedures other than judgment (such as summary procedure or monitoring) in a scenario of diligent repentance.

Meanwhile, regarding the consultative function, the Court of Auditors specified in 2024 (*Sezioni Riunite*, No. 3 of October 28, 2024) that it must exclusively concern the correct interpretation of principles and regulatory provisions, even if it is based on requests for opinions regarding specific cases. Furthermore, it would be preferable to allow the Court of Auditors itself, in the exercise of its self-organisation powers and due to the specific functions carried out by its various divisions, to identify the sections competent to perform the functions assigned to it, including a consultative role.

In conclusion, it may be useful to analyse the issue concerning the subjective aspect of this kind of liability (Tranquilli, 2022). As a rule, the responsible party is a public official. However, it is worth noting the interesting trend in legal scholarship that has drawn attention to the potential conflicts between administrative bodies "in order to safeguard unified interests that would be compromised by their inertia or non-fulfilment" (Constitutional Court, Judgment No. 43 of 27 January 2004), and from which administrative-accounting liability may also ensue. However, it would always be the public agent who would have to answer before the Court of Auditors, being responsible for their own actions, and not a representative of the administration. It follows that, although administrative-accounting liability shares various aspects with criminal liability, under Legislative Decree No. 231 of 2001, the latter would not be applicable to public authorities as entities or bodies.

8. *Digital tools and risk-oriented controls (especially controls on individuals and enterprises)*

The Italian system is characterised by a sophisticated framework of controls, a complexity that is also evident in the measures designed to safeguard the financial interests of the European Union (for further details, see BETKOSOL D.1, 2021 and BETKONEXT D.1.3, 2024). In an effort to streamline and enhance the efficiency of controls, national and supranational public administrations have gradually been adopting digital tools.

The digital revolution – an unprecedented phenomenon over the last few years – has had a profound effect on almost every aspect of daily life, at both the individual and societal levels. This transformation alone justifies the increasing engagement of administrative law in regulating digitalisation. However, beyond this necessity, public administrations have long integrated, and continue to integrate, digital tools into their work. This phenomenon, described by some as a shift from the *Internet of Things* to the *Internet of Everything*, signifies a transition

from the mere presence of digital technology in individuals' lives via devices that incessantly collect vast amounts of data, to a hyperconnected network interlinking people, processes, and information (Pajno, 2022).

The digital transformation sweeping through public administration and driving its computerisation represents a natural extension of Information and Communication Technologies (ICT). The application of ICT in the public sector has given rise to the concept of e-Government. No longer confined to mere office automation, e-Government now encompasses the provision of online services for citizens and businesses, thereby nurturing the development of digital administration. The digitalisation of administrative procedures and tools primarily aims to improve simplification and accelerate bureaucratic processes (Torchia, 2023).

The next section will examine some of the digital instruments adopted in Italy and at the EU level to improve the efficiency and effectiveness of safeguarding the EU's financial interests.

One significant tool introduced as part of the NRRP measures is Re.gi.s. As discussed in BETKONEXT D.1.3, Re.gi.s. is the centralised Italian platform managed by the *Ragioneria Generale dello Stato* (State General Accounting Department) within the Ministry of Economy and Finance. It enables central and peripheral entities, local authorities, and implementing entities to conduct operations in compliance with monitoring, reporting, and control obligations concerning NRRP-funded measures and projects. The platform was designed to address several key requirements, among which: (i) the validation of monitoring data and their transmission to the NRRP central service, (ii) the implementation of financial planning processes and definition of performance indicators and objectives, (iii) the activation and management of project selection procedures and the attainment of NRRP targets, (iv) reporting on expenditure incurred for projects, (v) recording any verification and control activities related to NRRP objectives, (vi) managing resource disbursement requests, and (vii) the administration of audit findings and follow-up actions.

Despite its advantages, the initial implementation of Re.gi.s. faced several challenges. As highlighted in BETKONEXT D.1.3, the responsible administrations often failed to input the requisite data for reporting or submitted inaccurate information. Furthermore, the support services provided by these administrations were frequently inefficient and slow. The

effectiveness of Re.gi.s. was subsequently reinforced by the provisions of Article 2 of Law-Decree No. 19 of 2 March 2024, later converted into Law No. 56 of 29 April 2024.

At the supranational level, the Irregularities Management System (IMS) (for further details, see BETKOSOL D.1, 2021 and BETKOSOL D.6, 2022) is a web-based telematics application accessible through the "AFIS" portal. The IMS enables Member States to draft and submit irregularity reports to the European Anti-Fraud Office (OLAF). The system facilitates the exchange of information concerning expenditure under the EU budget. Member States are required to report irregularities to OLAF on a quarterly basis. Pursuant to anti-fraud regulations, irregularity or fraud reports must be submitted within two months following the end of each quarter, in line with the "first administrative or judicial finding" – the initial written determination by a competent authority identifying an irregularity.

The IMS provides telematic access to structured reporting forms divided into logical sections with designated fields for data entry. These include (i) the identification of the fund, (ii) the type of irregularity, and (iii) the status of ongoing criminal, administrative, or recovery procedures.

IMS users are classified according to specific roles, such as "creator", "sub-manager" (responsible for report drafting), and "manager" (responsible for review and validation). This structured approach ensures real-time data sharing and enhances procedural efficiency. Through the IMS, the Italian COLAF has established an extensive network of contact points within central and local administrations to facilitate the exchange of information, best practices, and the resolution of procedural issues in real time.

Lastly, ARACHNE is an integrated IT tool for data extraction and enrichment, developed by the European Commission. It is designed to assist managing authorities in conducting administrative and management controls within the framework of the Structural Funds. ARACHNE compiles a comprehensive database of projects financed under the EU Structural Funds, augmenting this data with publicly available information to identify, based on risk indicators, projects, beneficiaries, contracts, and contractors potentially susceptible to fraud, conflicts of interest, or irregularities.

Importantly, ARACHNE does not assess the specific behaviour of fund beneficiaries, nor does it serve as an automatic exclusion mechanism. Rather, it provides valuable risk signals that strengthen management controls without directly evidencing error, irregularity, or fraud. It aims to (i) improve the efficiency and effectiveness of management assessment, optimising

human resource capacity for desk reviews and on-the-spot checks, (ii) provide managing authorities with documented improvements in effectiveness monitoring over time, (iii) reduce potential irregularities and lower error rates, in line with both Commission and managing authority objectives, and (iv) establish an effective and proportionate anti-fraud measure.

The ARACHNE Risk Scoring Tool enables managing authorities to identify high-risk projects, contracts, contractors, and beneficiaries, allowing them to focus administrative capacity on targeted verifications. If a managing authority, based on risk scoring and subsequent verifications, determines that expenditure may be affected by irregularities, it undertakes all necessary procedures before certifying expenditure to the Commission. This ensures compliance with regulatory requirements, facilitates the timely reporting of irregularities to OLAF through the IMS, and strengthens the overall management and control system.

In conclusion, digital tools have become indispensable in the effective implementation of control mechanisms aimed at safeguarding the EU's financial interests. By enhancing transparency, efficiency, and accountability, these technologies contribute to strengthening financial governance and mitigating the risks of fraud and irregularities. Continued investment in digital innovation, coupled with robust regulatory frameworks, will be key to ensuring resilient and adaptive administrative systems capable of responding to evolving challenges in financial oversight.

Part B: Issues of Criminal Law

9. *An overview of the Italian legal order's compliance with the PIF Directive*

The Italian legal framework demonstrates a considerable degree of compliance with the requirements set out in the PIF Directive (Directive (EU) 2017/1371). This alignment is particularly evident in the follow-up conducted by Member States in response to the recommendations outlined in the 2022 PIF Report (for further details, see the 2022 PIF Report of the Commission), which were substantially reproduced in the Commission's 2023 Annual Report on the Protection of the EU's Financial Interests (2023 PIF Report of the Commission). In reality, the Italian legal framework has proved to be mostly compliant with all three recommendations.

Regarding the first point, on the detection, reporting, and follow-up of fraud, although it is true that Italy does not have a low fraud incidence rate, due to a number of factors, it does demonstrate an above-average degree of effectiveness in fraud detection mechanisms (Follow-up by Member States to the recommendations of the PIF Report 2022, 19 f.). First of all, in recent years, there have been legislative actions aimed at broadening the scope of offences falling within the scope of the PIF Directive. Specifically, as the following paragraphs will illustrate, many efforts in this direction were made through D.lgs. No. 75 of 14 July 2020 and D.l. No. 13 of 25 February 2022, which extended the categories of payments for which misappropriation could lead to criminal liability, introduced new offences related to cross-border tax fraud – including for legal entities – and strengthened the asset seizure measures for more fraud-related offences. Furthermore, in addition to implementing the EPPO (examined in depth in in paragraphs 3 and following), the investigative tools available include specialised units of the Financial Police, that operate both at a central (*Nucleo Speciale Spesa Pubblica e Repressione Frodi Comunitarie – Guardia di Finanza*) and local level (Follow-up by Member States to the recommendations of the PIF Report 2022, 21). Also, regarding the national RRP measures, Italy has implemented a system with the specific goal of detecting and prosecuting fraud (Follow-up by Member States to the recommendations of the PIF Report 2022, 24 ff.; Measures adopted by Member States to protect EU's financial interests, 54).

Similarly, the IT tools used in Italian practice appear to comply with the second recommendation of the 2023 Report regarding the digitalisation of Anti-Fraud mechanisms. The follow-up to the 2022 Report, already highlighted how the use of investigative digitalised tools and databases (such as ARACHNE, SIAF, THESEUS and PIAF-IT), alongside the establishment of the Agency for National Cybersecurity by D.lgs. n. 82 of 14 June 2021 both facilitated the identification of anomalies in financial transactions and brought Italy substantially into line with the above-mentioned recommendation. Nonetheless, challenges remain in the form of resource constraints, particularly concerning the need for additional personnel specialised in technical management (Follow-up by Member States to the recommendations of the PIF Report 2022, 60 ff. and 75 ff.).

Lastly, the third recommendation regarded the anti-fraud governance of Member States. In this regard, it should be noted that Italy has established what is regarded as a comprehensive network of authorities tasked with financial oversight (Follow-up by Member States to the recommendations of the PIF Report 2022, 84 ff.).

Furthermore, it is worth mentioning that Italy has successfully implemented the provisions concerning whistleblowing protections (2023 PIF Report of the Commission, p. 12; on this issue, see Parisi, 2020, 3 ff; Cossu, Valli, 2023, 155 ff.). D.lgs. n. 24 of 10 March 2023 ensures comprehensive safeguards for individuals who report fraudulent activities, thereby demonstrating what can be considered a high degree of alignment with the requirements set out in the most recent Commission Reports.

9.1. *Remaining Conformity Issues: Introduction*

Looking more closely at the individual criminal law provisions, it seems that the same can be said for the majority of the offences imposed by the Directive. Leaving a more in-depth analysis of the most relevant offences – namely fraud, bribery-related offences, and tax crimes – to the following sections, it can already be observed that the legal framework post-D.lgs. 75/2020 is compliant with the provisions of the Directive.

As for money laundering offences, when the PIF Directive came into force, conduct involving the proceeds of the criminal acts covered by Directive (EU) 2015/849 was already criminalised under Articles 648-*bis* ff. of the Criminal Code, with the sole exception of a debate regarding the criminal nature of money laundering related to expenditures derived from a tax crime (Acquaroli, 2018, 615; Gullo, 2018, 10; Maugeri, 2016, 109; Zanchetti, 416). In any case, it must be pointed out that Italian case law has long settled on the position that the aforementioned conduct is sanctionable (as highlighted by Gullo, 2024, 392 ff.). Furthermore, in recent years, the scope of money laundering crimes has been further broadened by D.lgs. n. 195 of 8 November 2021, which implemented Directive (EU) 2018/1673, and by D.l. n. 19 of 2 March 2024 (the so-called PNRR-*quarter*), which strengthened the crime of fraudulent transfer of assets as punished by Article 512-*bis* of the Criminal Code (Fiorinelli, 2024, pp. 17 ff.).

Regarding smuggling offences, the already mentioned D.lgs. 75/2020 introduced a special aggravating circumstance when the amount of border duties due exceeds one hundred thousand euros, and re-introduced offences that were decriminalised by D.lgs. 8/2016 regarding the hypothesis of “simple smuggling” where the border fees allegedly due are superior to EUR 10,000, in order to comply with the Directive. More recently, customs laws

were reorganised in a new consolidated text, D.lgs. n. 141 of 26 September 2024, which kept the mentioned changes.

As for the aggravating circumstances covered by the PIF Directive in the area of organised crime, as described in Framework Decision 2008/241/JHA, the presence in the domestic legal system of provisions of general scope, such as Articles 61-*bis*, 416, 416-*bis*, and 416-*bis*.1 of the Criminal Code made taking action on this aspect unnecessary when the Directive came into force (Basile, 2017, 69).

Instead, as the next section will show, some minor changes have recently been introduced regarding asset seizure for fraud-related offences, with a view to compliance with Article 10 of the PIF Directive (Marandola, 2016, pp. 79 ff.; Attanasio, 2021, pp. 334 ff.). In this regard, the confiscation of equivalent assets was also introduced for smuggling offences by D.lgs. n. 156 of 4 October 2022 in cases where direct confiscation is not possible (Picciotti, 2022, paragraph 2).

Lastly, regarding corporate criminal liability, D.lgs. 231 of 8 June 2001 provides a general framework fully in line with Article 6 of the PIF Directive. All crimes of fraud and bribery-related offences are indeed provided for in the above-mentioned decree. In this regard, D.l. n. 105 of 10 August 2023 also added to the list of predicated offences related to the obstruction of a public tendering procedure as described in Articles 353 and 353-*bis* of the Criminal Code, further extending corporate liability for such offences. Moreover, D.lgs n. 75 of 2020 had already introduced fraud against the European Agricultural Funds (EAFRD and EAFG) as offences for which liability is envisaged (Mazzanti, 2020, 106; Ardizzone, 2024, 1 ff.). The same legislative decree also introduced Art. 25-*sexiesdecies* in D.lgs. 231/2001, making corporations responsible for smuggling crimes. As for money laundering offences, Article 25-*octies* of D.lgs. 231/2001 already made provision for all the relevant offences since the entry into force of Law No. 186 of 15 December 2014 (Gullo, 2024, 422 ff.). The only significant change in this regard was made by the aforementioned D.l. n. 105 of 10 August 2023 which also introduced the offence of the fraudulent transfer of assets punishable under Article 512-*bis* of the Criminal Code among the predicated crimes (Fiorinelli, 2024, 39 f.).

9.1.1. Remaining Conformity Issues: Fraud

Regarding the regulation of fraud, Italy was already compliant with the European criminalisation obligations set out in the PIF Directive (Basile, 2019, 16 ff.; Bondi, 2018, 687; Lanotte, 2019, 95). In fact, as highlighted in the explanatory report to the draft of the European Delegation Law of 2018 (which included the PIF Directive among the acts to be implemented) and in the explanatory report to Legislative Decree No. 75 of 2020 (the implementation decree of Delegation Law No. 117 of 2019, which transposes the PIF Directive), the offences of aggravated fraud for obtaining public funds (Article 640-*bis* of the Criminal Code), unlawful receipt of public funds (Article 316-*ter* of the Criminal Code), and misappropriation of public funds (Article 316-*bis* of the Criminal Code) already covered, in their entirety, all forms of fraud that harm the financial interests of the Union in accordance with the Directive (Basile, 2019, 17; Flora, 2019, 2; La Vattiata, 2018, 8; Spena, 2018, 47; see also the Explanatory Report to the draft of the European delegation law of 2018 and the Explanatory Report (not final) to Legislative Decree No. 75 of 2020). The Italian criminal system for protection against grant fraud mainly recognises three crimes: aggravated fraud for obtaining public funds (Article 640-*bis* of the Criminal Code) and unlawful receipt of public funds (Article 316-*ter* of the Criminal Code), which penalise fraud committed by private individuals during the grant procedure aimed at obtaining funds. The misappropriation of public funds (Article 316-*bis* of the Criminal Code) targets the abusive use of previously received funding downstream (Bartoli, 2022, 328 f.; Della Bella, 2021, 2645; Di Vizio, 2023, 74; Pelissero, 1991, 927).

A further offence is fraud against the FEOGA (Article 2(1) of Law No. 898 of 1986), which introduced the first crime related to grant fraud into the Italian legal system. This law currently penalises the unlawful acquisition of contributions funded in whole or in part by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development. In 2007, the original European Agricultural Guidance and Guarantee Fund was replaced by the European Agricultural Guarantee Fund and the EAFRD.

In the Italian legal system, although there is no specific provision for sanctioning crimes detrimental to the financial interests of the European Union, there are numerous offences corresponding to those covered by the PIF Directive (Explanatory report to the draft of the European delegation law of 2018, 25). Specifically, the crimes mentioned can embrace all types of fraud relating to expenditure, as outlined in Article(32), letters a) and b) of the PIF Directive, since the form of misappropriation mentioned in subparagraph iii) is covered by the crime of misappropriation under Article 316-*bis* of the Criminal Code, whereas the unlawful

appropriation of funds through the falsification of documents or the omission of relevant information referred to in subparagraphs i) and ii) falls under the scope of Articles 316-*ter* and 640-*bis* of the Criminal Code.

With Legislative Decree No. 75 of 2020, the Government therefore made some changes that did not radically change the system (Ballini, 2020, 475; Donelli, 2021, 439). Firstly, the legislation underwent a terminological update, replacing the term "European Communities" with the more modern "European Union" (Di Vizio, 2023, 3; Mazzanti, 2020, 3). Secondly, the legislative decree addressed the criminal framework for offences that did not include a maximum penalty of at least four years of imprisonment for what are termed serious cases, as defined by the threshold established in the Directive (Basile, 2019, 17).

For this purpose, an additional sentence was inserted in the first paragraph of Article 316-*ter* of the Criminal Code, which states that if the action in question harms the financial interests of the European Union and results in damage or profit exceeding EUR 100,000, the penalty can range from six months to four years' imprisonment (Basile, 2020, 191; Donelli, 2021, 440). However, if the fraud to the detriment of the financial interests of the Union does not result in significant damage or profit and is not deemed serious under the Directive, it is subject to the provision in the first sentence of the first paragraph, which imposes a maximum prison sentence of three years.

A comparable amendment was introduced in relation to fraud against the FEOGA. The first paragraph of the provision was adapted to include a range of six months to four years' imprisonment in cases where the damage or profit exceeds EUR 100,000 (Basile, 2020, 191; Mazzanti, 2020, 7). For this offence, any explicit reference to damage to the financial interests of the European Union would have been superfluous, as FEOGA contributions come directly from the EU, meaning that the fraud in question always harms the financial interests of the Union. This provision was also amended by D.lgs n. 156 of 2022 (the so-called PIF corrective), which introduced – in Law No. 898(2)(3-*bis*) of 1986 – the applicability of confiscation under Article 240-*bis* and Article 322-*ter* of the Criminal Code in the event of a conviction or plea bargaining in relation to the offence of fraud against the FEOGA.

On the other hand, Article 640-*bis* was not amended, as it was considered sufficient for supranational requirements. In fact, when the PIF Directive was transposed, this provision already covered all types of fraud, whether against the State or the Union, regardless of the amount, with a maximum penalty of seven years' imprisonment.

The legislative decree, however, amended Article 640(2)(1) of the Criminal Code by including the European Union as a potential victim of this aggravated form of fraud against the State (Ballini, 2020, 484; Donelli, 2021, 440). This amendment bridged the legal gap that had long been filled by case law, which had controversially equated the European Community to the State and other public entities (Ballini, 2020, 484; Mazzanti, 2020, 6).

No updates were made for misappropriation under Article 316-*bis* of the Criminal Code: this provision was already in line with EU criminalisation obligations as it imposes a maximum penalty of four years imprisonment for all misappropriation of public funds, whether at national or European level.

Concluding this analysis, we can confirm that in the field of fraud, the Italian legal system was already in harmony with supranational requirements, apart from the need to make some adjustments to penalties. However, while Italy appears to comply with European regulations on the external front, it is on the internal level that the criminal law framework for combating fraud presents coordination problems between various criminal provisions, particularly between the offences covered by Articles 316-*ter* and 640-*bis* of the Criminal Code. These issues originated earlier, following the introduction of Article 316-*ter* of the Criminal Code into our legal system, specifically at the time of the adaptation to the provisions of the PIF Convention through Law No. 300 of 2000, twenty years before the implementation of the PIF Directive. But it is still a problem arising from the implementation of a European regulation, which, by placing Italy in a situation of over-compliance with supranational obligations, has led to issues of coordination with the previous legal system.

It cannot be ignored that the Italian legislator often adopts an uncritical approach to transposing supranational provisions during the process of aligning with community acts, leading to the proliferation of sometimes unnecessary laws, without organically integrating European rules into the existing legal framework and without seizing the opportunity to reform the system's critical aspects (Basile, 2020, 192 f.; Giunta, 2019, 289; Mezzetti, 2022, 3958; Spena, 2018, 41). For example, the adoption of the PIF Directive could have been an opportunity to resolve, from the legislative point of view, the issues of coordination between Articles 316-*ter* and 640-*bis* of the Criminal Code, which arose over twenty years ago, probably due to the careless approach of the Italian legislator.

9.1.2. Remaining conformity issues: Bribery and other corruption-related offences

Regarding compliance of the Italian legal system with the obligations of criminalisation set out by the PIF Directive in relation to corruption, all bribery-related offences provided for in the Directive are present in Italian law and can therefore be deemed consistent with the European legal framework. The only concern in this regard relates to recent changes concerning abuse of office.

It must indeed be noted that, with Law-Decree No. 92 of 2024 (converted into Law No. 112 of 2024), the Government repealed the crime of abuse of office and, at the same time, introduced a new offence under Article 314-*bis* of the Criminal Code: the "Improper allocation of money or movable property", which punishes, "[o]utside the cases provided for under Article 314, the public official or the person in charge of a public service who, by reason of their office or service, has possession or otherwise control over money or other movable property belonging to others, and uses it for a purpose other than that provided by specific legal provisions or acts having the force of law, for which no discretional margin remains, and intentionally causes an unjust financial gain for themselves or others or unjust harm to others".

This offence concerns "embezzlement by misappropriation", which, until the 1990 reform, was expressly subsumed under the general offence of embezzlement. Following Law No. 86 of 1990, both academic and judicial interpretations classified misappropriation by public officials as embezzlement, where money or other assets were diverted from their public purpose and used for the personal benefit of the official rather than for institutional purposes. On the other hand, abuse of office was held to occur where the act involved improper use of the asset, which, although in breach of sector-specific regulations, did not deprive the public body of the asset itself. In such cases, this use served not only private interests but was also connected to objectively existing public interests (Gambardella, 2024, 4; Gatta, 2024, 136 f.).

With the introduction of the offence under Article 314-*bis* of the Criminal Code, the legislator sought to maintain the criminal liability of public officials for misappropriation, even after the repeal of the offence of abuse of office. The new provision created a hybrid offence, incorporating both the essential elements of embezzlement (namely the status of the offender and their control over the property) and previously associated with abuse of office (specifically, the breach of legal provisions that allow no margin of discretion) (Gambardella, 2024, 3; Seminara, 2024, 3 f.). In fact, as the Supreme Court has recently declared, there is legal continuity between the repealed offence of abuse of office and the new offence under Article 314-*bis* of the Criminal Code in relation to the penalisation of misappropriation in breach of

specific legal provisions that leave no margin of discretion to the public official. This continuity was intended to prevent an *abolitio criminis* following the repeal of the offence of abuse of office (Gatta, 2025, 1 ff.; Seminara, 2024, 6). Furthermore, the Supreme Court clarified in the same judgement that the scope of 'embezzlement' under Article 314 of the Criminal Code remains unchanged, as the new offence does not affect it directly but merely criminalises conduct previously falling under abuse of office (*Cass. pen.*, Sez. VI, 4.2.2025, No. 4520).

The resulting legal system appears to be largely compliant with the provisions of the PIF Directive, as European legislation does not require abuse of office to be considered a criminal offence, unlike the case of embezzlement by a public official. Specifically, under Article 4(3) of the PIF Directive, embezzlement is the act of a public official entrusted with the management of funds or assets using or appropriating the funds or assets for a purpose other than that for which they were intended and in a manner that harms the financial interests of the Union. Therefore, this obligation to create a criminal offence in the Italian legal system was, at the same time, fulfilled by the introduction of the offence of embezzlement under Article 314 of the Criminal Code and, with respect to misappropriation, by the introduction of the offence of abuse of office (Gatta, 2024, 137 f.). After the 2024 reform, this obligation to introduce criminal offences is fulfilled by those under Articles 314 and 314-*bis* of the Criminal Code, as described above.

Article 4(3) of the PIF Directive obliges legislators to make embezzlement by Union officials a criminal offence. This obligation was met, with regard to embezzlement by misappropriation, by including a reference to Article 323 of the Criminal Code in Article 322-*bis* of the Criminal Code, which extends certain serious offences against public authorities to international and European public officials. For this reason, the 2024 reform introduced Article 314-*bis* of the Criminal Code into the catalogue of offences listed in Article 322-*bis* of the Code, replacing the repealed offence of abuse of office (Gambardella, 2024, 2).

In addition, with regard to penalties, the legislator has provided in Article 314-*bis*(2) of the Criminal Code that "the penalty is imprisonment from six months to four years when the act harms the financial interests of the European Union and the unjust financial gain or unjust damage exceeds EUR 100,000" in accordance with the provisions of Article 7(3) of the PIF Directive (Seminara, 2024, 3 f.). As for corporate criminal liability, Law No. 112/2024 also introduces Article 314-*bis* of the Criminal Code among the predicate offences provided under D.lgs. 231/2001, therefore complying also with Articles 6 and 9 of the Directive.

Two issues of conformity with the Directive may arise in relation to this new offence and following the repeal of abuse of office. Firstly, concerning the material object of the offence, the new provision is limited to money or other movable property, whereas Article 4(3) of the Directive uses the broader terms "funds or assets". Therefore, in cases where embezzlement by misappropriation involves immovable property, such conduct would not be considered criminal under Italian legal law and would thus fail to meet the incrimination requirements (Gatta, 2025, 140). Secondly, Italian law penalises such behaviour only when it is carried out in breach of specific laws, decree-laws, or legislative decrees that leave no margin of discretion. This formulation therefore makes no mention of conduct involving the improper allocating of public property in breach of regulatory acts or laws that leave some margin of discretion to the public official (in relation to the interpretation of such clause for the repealed abuse of office, see also La Rosa, 2021, 1459 ff.). Since the Directive does not impose such limitations on the scope of incrimination, the exclusion of the latter type of misappropriation also appears inconsistent with European obligations (Gatta, 2025, 140 f.).

In conclusion, in order for the Italian system to be fully compliant with the PIF directive after the 2024 reform, if the legislator fails to act, it might be considered desirable for the Constitutional Court to intervene.

9.1.3. Remaining conformity issues: tax offences

Regarding the compliance of the Italian legal system with the obligations of criminalisation set out by the PIF Directive in relation to tax offences, all the provisions in Article 3(2)(c) and d) of the Directive are fully implemented in the current legal framework. Indeed, all fraudulent behaviour that falls within the scope of the above-mentioned article now comes under the scope of D.lgs. n. 74 of 10 March 2000. With regard to sentencing, D.l. n. 124 of 26 October 2019 provided for greater prison sentences for the declaratory offences covered by the Directive, even where the act was committed in part in another State and the value-added tax evaded exceeds the amount of ten million euros (Ingrassia, 2020, 307 ff.).

The already mentioned D.lgs. 75/2020 and D.lgs. 156/2022 subsequently amended Article 6 of D.lgs. 74/2000 in order to comply with Article 5 of the Directive concerning attempts at fraud. As a result, false declarations – which had not previously constituted a criminal offence – are now punishable when carried out with the aim of evading value-added

tax through cross-border fraudulent schemes involving the territory of at least one other Member State of the European Union, and where the conduct causes, or is likely to cause, damage totalling ten million euros or more (Bellacosa, 2020, 611 ff.; Elampini, 2020, par. 1 ff.).

As for the confiscation of assets, D.lgs 87 of 14 June 2024 introduced significant amendments concerning offences related to value-added tax. Specfically, Article 12-*bis* of Legislative Decree 74/2000 now establishes that the seizure and confiscation of profits obtained from tax offences are not permitted unless there is a tangible risk that the financial guarantees may be dissipated (Penco, 2024, 1583 ff.; Ardizzone, 2025, 18 ff.). This risk is assessed based on the offender's income, assets, and overall financial situation, as well as the seriousness of the offence. However, if the tax liability is being settled through instalment payments – whether as part of conciliatory procedures or through the *accertamento con adesione* mechanism – confiscation remains prohibited, provided that the taxpayer is compliant with the agreed payments (Lanzi-Aldovrandi, 2020, 271 ff.). The legislative intent behind this amendment was to align preventive seizure with the existing case law principles on confiscation, which already excluded from confiscation the portion of illicit gains that the taxpayer had committed to reimbursing the tax authorities. Indeed, in the Italian legal system, preventive seizure is a precautionary measure designed to preemptively secure assets before final sentencing. However, reference to the seriousness of the offence appears to broaden the potential application of preventive measures, allowing their imposition even in cases where the risk of asset dissipation does not strictly apply. Therefore, Italy's legal framework appears to remain consistent with EU obligations regarding asset seizure also for such offences. Additionally, the revised rule requires taxpayers to comply with scheduled instalment payments to benefit from exclusion from confiscation. As a result, the possibility of recovering tax revenues lost due to the commission of the offence remains safeguarded.

Instead, some minor compliance issues may arise concerning corporate criminal liability. To date, the Italian legal framework is fully compliant in this regard: Article 25-*quinquiesdecies* of the mentioned D.lgs. 231/2001, as amended by D.lgs. 156/2022 provides full coverage for all VAT offences mentioned in the Directive. Nonetheless, the provision expressly refers to the Articles of D.lgs. n. 74/2000, which will cease to be in force at the end of 2025 and will be replaced by D.lgs. n. 173 of 5 November 2024. Therefore, the provisions referred to in D.lgs. n 231/2001 should also be updated to align with the new provisions. Indeed,

Italian corporate criminal liability follows a speciality principle (the *principio di specialità*) whereby corporations can only be held liable for crimes expressly included in the predicate crimes catalogue (Pelissero, 2020, 101 ff.). As a result, an update of the above-mentioned provisions should be required before the end of the year. It is true that Article 101(3), D.lgs. 173/2024 provides that when laws, regulations, decrees, or other rules or measures refer to provisions expressly abolished by the same law – such as D.lgs. 74/2000 – the reference must be considered to be to the corresponding provisions of D.lgs. 173/2024, as reported by each article. Therefore, it cannot be argued that there will be a full *abolitio criminis* for corporations in relation to tax offences, and entities will probably continue to be held liable also after the entry into force of the above-mentioned decree. Nonetheless, to avert any risk, it would be better to update the mentioned provisions of D.lgs. 231/2001 before the end of the year.

10. *A brief overview on the adequacy of the Italian legal order with regard to the enforcement of the EPPO regulation*

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.

The focus on the mutual recognition of actions and measures, along with the principle of mutual trust among Member States, is shifting towards a European criminal procedure based on common and generalised principles applicable in every State (Barrocu, 2021, 77. Bernardi, 2021, 33. Salazar, 2021, 53 ff. Falato, 2020).

However, this aspect remains the most controversial within the entire EPPO framework as the regulatory discipline often overlooks the diversity of legal systems, resulting in a complex set of application rules or necessitating complex interventions to clarify European norms in pursuit of the long-sought-after harmonisation.

This is particularly evident in the case of Italy, which, despite being among the States that have best transposed the EPPO framework, has faced challenges due to the terminological differences used in the regulation. These discrepancies have required significant interpretative efforts, starting with the very concept of "competence", which the regulation employs interchangeably to refer also to the powers of the public prosecutor. On this point, some commentators, considering the unique manner in which judicial competence is established for investigations conducted by the European Prosecutor, have coined the expression "jurisdictional competence" (Barletta, 2024, 1. Galantini, 2022, 39). While this term is somewhat distant from Italian procedural terminology, it closely aligns with the regulatory framework's aim of preventing potential conflicts over powers among European Public Prosecutors.

Beyond these terminological aspects, which appear to have been well integrated into the Italian system, it is now necessary to assess whether the Italian legislator's implementation has effectively met the EU's requirements.

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 (see the Compliance assessment of measures adopted by the Member States to adapt their systems to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'). Annex I – Overview of the situation per Member State). 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 thirteen provisions that were deemed 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.

10.1. *Duration of the designation of the European Delegated Prosecutor*

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.

10.2. *Reporting criminal offences*

Article 24(1) of Regulation (EU) 2017/1939 states that "[T]he 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 to be sent both to the EPPO and the National Prosecution Office and that the EPPO must confirm within thirty 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 thirty days.

10.3. *Conflicts of competence among European Public Prosecutors*

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 2 February 2021 is deemed wholly non-compliant with the Regulation as it designates the General Prosecutor 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.

In addressing conflicts related to the functions of the public prosecutor, the Italian legislator has chosen to resolve transnational disputes by applying the same rules that, within the Italian procedural system, govern conflicts of attribution among domestic Public Prosecutors. However, the reference to the provisions intended to guide the decisions of the

General Prosecutor (Articles 54, 54-*bis*, 54-*ter*, and 54-*quater* of the Italian Code of Criminal Procedure), albeit invoked to the extent that they are compatible, has raised concerns regarding the very role assigned to the higher prosecutorial authority. The issue specifically concerns the legitimacy of the General Prosecutor's Office at the Court of Cassation, given that it is not a judicial body and is therefore not entitled to refer a preliminary question to the Court of Justice of the European Union (CJEU) (Galantini, 2022, 40. Balsamo, 2019, *passim*).

This raises doubts about its ability to seek a preliminary ruling on the interpretation of Articles 22 and 25 with regard to potential conflicts of competence between the EPPO and the competent national authorities (Article 42(2)(b) of the Regulation).

10.4. *Reopening investigations*

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 interfere with the competence and determinations of the EPPO.

11. *Conformity Issues on the work of the Italian EDP and their relationship with the EPPO Central Office*

Building on the critical issues highlighted in Sections 1.2, 1.3, and 1.4, broader challenges emerge in the interactions between European Prosecutors, mainly due to an excessively general regulation of competence, understood here primarily as the powers and functions of the public prosecutor rather than those of the judiciary.

The main weakness of this framework lies in the vague criteria set out in the EPPO Regulation (De Amicis, 2021, 2). Rather than clarifying and harmonising the rules on competence, the regulation increases the discrepancies in interpretation among Member States, which already struggle with the lack of clear, well-defined fundamental principles.

Guidelines for interpretation: in the following sections, the term "competence" will frequently appear in reference to the functions of the European Prosecutor. Therefore, whenever it is used in the context of the regulatory framework, it should be understood as meaning "attribution" to better contextualise the critical analysis in relation to the Italian system.

For the sake of clarity and completeness, the analysis will distinguish between substantive, or 'subject-matter', and territorial competence.

11.1. *Subject-Matter Competence*

Regarding subject-matter competence, it is noted that it is defined with broad margins of indeterminacy due to general parameters, which sometimes overlap or are subordinated to exceptions and counter-exceptions. The use of non-hierarchically fixed criteria, or those that are strictly defined, may thus lead to a peculiar kind of "expanded competence", which is subsidiary or ancillary and undoubtedly evolving on the basis of various variables (Bellacosa, De Bellis, 2023, 38 ff.; Galantini, 2022, 40).

This elusive parameter is precisely what raises concern. The EPPO exercises its competence either originally or by assumption, with the system of "competing competences" between the EPPO and national prosecutors grounded in the EPPO's right to assume jurisdiction (Regulation, recital 13).

It is precisely the absence of strictness that creates insurmountable interpretative difficulties. The coordinating parameter for competence related to crimes affecting the financial interests of the EU is defined according to national law (Article 22.1 of the Regulation), thereby highlighting the first element of evolutionary discrepancy in the European criminal and procedural law system. The vagueness of the provision stating that EPPO competence applies to crimes resulting in or potentially causing damage amounting to less than EUR 10,000, as established in "the case has Union-wide implications requiring an investigation by the EPPO" (Article 25.2 of the Regulation), along with the provision outlined in "EPPO refrains from exercising its competence if there is reason to believe that the actual or potential damage to the Union's financial interests caused by an offence under Article 22 does not exceed the actual or potential damage caused to another victim" (Article 25.3(b)), broadens the scope

of national discretion, especially concerning the classification of crimes impacting the EU's financial interests (Belfiore, 2021, 69). De Amicis (2021, p. 2) and Marchetti (2021, p. 859).

This stylistic choice, in the European legislator's intentions, aims to facilitate the prosecution of crimes that harm the Union's interests by providing a framework to categorise the diverse range of significant financial crimes, while acknowledging the inherent differences in criminal law among Member States.

Certainly, fewer difficulties, at least seemingly, arise in attributing subject-matter competence "for crimes related to participation in a criminal organisation as defined in Framework Decision 2008/841/JHA, as implemented by national law, if the criminal activity of such a criminal organisation is focused on committing crimes that affect the EU's financial interests" (Article 22.2 of the Regulation).

Again regarding subject-matter competence, one aspect that remains problematic concerns the "European connection", in line with the cases referred to in Article 12 of the Italian Code of Criminal Procedure. Discussions have focused on the possible identification of a link between teleological crimes, but not evidentiary ones, or by referencing the criteria outlined for other offences (Sicurella, 2018, 849; Regulation Eurojust (UE) 2018/1727).The parameter established in recital 54, equating "indivisibility" to the "identity of material facts as a set of concrete circumstances inextricably connected in time and space", appears to contradict the goal of expanding the EPPO's attributions when it relies on a criterion more suited to preventing duplicative actions, thus limiting the operational scope of the European Prosecutor's Office.

To address potential conflicts stemming from the 'subject-matter competence' rules in Article 22 of the Regulation, the General Prosecutor at the Court of Cassation is appointed as the authority to determine which prosecution – European or national – should proceed under Article 25.6 of the Regulation. For further discussion, please refer to the earlier comments about the challenges associated with assigning this body as the deciding authority in conflicts.

11.2. *Territorial Competence*

Minimal issues related to territorial competence are also noted (Barrocu, 2021, 84 ff.). Ruggeri (2018, p. 603) notes that the fragmentation of provisions complicates full understanding of the operational mechanism of territorial allocation. Article 23 of the

Regulation outlines the general framework, clarifying that the EPPO is competent for crimes committed wholly or partly within the territory of one or more Member States or by a national of a Member State, as long as a Member State has jurisdiction over such crimes committed outside its territory, including those committed outside the territories of Member States by a person who, at the time of the offence, was subject to the applicable law or regime. However, this provision must be viewed in conjunction with Article 26(4) of the Regulation, which states that, regarding the initiation of EPPO investigations, a case is typically opened and managed by a delegated European Prosecutor from the Member State where the central criminal activity occurs, or, if multiple related crimes under EPPO jurisdiction have taken place, by the Member State where the majority of the crimes occurred. Although not entirely straightforward, this framework helps prevent conflicts among Delegated Public Prosecutors by implementing a two-tier allocation system, as illustrated above.

However, the role of the Permanent Chamber should not be overlooked. In instances where a Delegated Prosecutor from another Member State initiates an investigation that diverges from the criteria mentioned above and relies on various priority criteria (Article 26(4)(letters a, b, and c), the case may be reassigned to another Delegated Prosecutor from a different Member State, or cases may be consolidated or separated, with the selection of the delegated European Prosecutor for each case. This process continues until a decision is made to proceed with prosecution, provided that such decisions comply with the general interest of justice and the criteria for selecting the delegated European Prosecutor responsible for the case (Article 26(5) of the Regulation).

Furthermore, for the purposes of prosecution, if multiple Member States have jurisdiction, the Permanent Chamber decides that prosecution will be carried out in the Member State of the delegated European Prosecutor assigned to the case (Article 36(3)) (Ruggeri, 2018, 603). However, “before deciding to bring a case to trial, the Permanent Chamber may, upon the proposal of the delegated European Prosecutor assigned to the case, decide to consolidate various proceedings if different Delegated Prosecutors have conducted investigations against the same or the same persons, so that prosecution is carried out before the judicial authorities of a single Member State that, in accordance with its law, has jurisdiction over each of those proceedings” (Article 36(4) of the Regulation).

The distinctiveness of the office, frequently referenced to avoid conflicts of interest, also serves as the foundation for the role of the Permanent Chambers, which “also ensure the

coordination of investigations and prosecutions in cross-border cases" (Article 10.2 of the Regulation) are established based on prior consultations with the relevant European Prosecutors and/or Delegated European Prosecutors (Article 26.5 of the Regulation).

11.3. *Complexity and Issues concerning the Regulation: forum shopping*

Both in terms of how individual cases are allocated based on 'subject matter' and their territorial identification, the rules exhibit a fluidity that is challenging to reconcile with the principle of dynamic legality. The inability of the Delegated European Prosecutor to independently determine the investigations they have conducted becomes evident when considering the Permanent Chamber's decision on trial referral, which involves a crucial decision: selecting the forum for the trial.

The phenomenon of 'forum shopping' may result in the arbitrary choice of a forum for prosecution, even without specific criteria intended to prevent improper forum selections. One of the most significant criticisms, and perhaps *the* most important, is that a forum could be selected where criminal and procedural laws are stricter, providing fewer protections in order to reach a decision that aligns with the interests of justice within the European Union (Barletta, 2024, 2 ff.).

Regarding the potential dismissal of a case, which is based on criteria that are not yet clearly defined – such as an impossible prosecution or a lack of relevant evidence, except in cases under Article 39 of the Regulation – the Delegated Prosecutor must seek approval from the Permanent Chamber.

Although internal controls within the EPPO office are still subject to judicial oversight by national authorities, as the relevant rules are domestic, it is evident that the obligation to prosecute – which upholds the principles of independence, equality, and legality – is undermined when decisions depend on largely vague criteria, even if those decisions can ultimately be reviewed (Bellacosa, De Bellis, 2023, 44 f.; Ruggeri, 2018, 603; Panzavolta, 2013, 143). This results in weakened defence guarantees, as the authority responsible for prosecution is identified in a largely discretionary manner.

12. *Final Considerations*

The incorporation of the EPPO legal framework into the Italian legal system marks a significant step towards a more coordinated and effective European criminal justice system, thanks to the adoption of Legislative Decree No. 9 of 2 February 2021. This decree has enabled Italy to comply with Regulation (EU) 2017/1939. However, some critical issues persist, which, despite the ongoing adjustment period, could undermine the EPPO's initial ambitions.

Among the main issues are discrepancies between national and European provisions, particularly regarding the designation of EDP and their term of office, the reporting of crimes, and the resolution of jurisdictional conflicts. These issues highlight the difficulty of reconciling national legal traditions with the broader goal of harmonisation at the European level. Additionally, the vague formulation of certain criteria in the Regulation – particularly regarding the allocation of competences – leaves room for differing interpretations, complicating the uniform application of European criminal procedure.

Two aspects warrant particular attention. The first concerns the resolution of conflicts of competence among European Prosecutors. In the Italian system, such conflicts traditionally refer to the office of the public prosecutor. To meet European requirements, which call for the identification of a competent body to refer preliminary questions to the CJEU, a mechanism similar to that outlined in Articles 28, 30, 31, and 32 of the Italian Code of Criminal Procedure could be considered, which assigns the task of resolving conflicts to the Court of Cassation. However, this solution risks amplifying interpretative ambiguities between competence and attribution, merging different functions and generating potential interferences between judicial offices and European Prosecutors' Offices.

The second critical issue concerns the risk of forum shopping. The wide discretion granted to the prosecution in selecting the forum could lead to strategic choices influenced by differences in national procedural safeguards, which highlights the need for stronger procedural safeguards. In particular, the authority of the Permanent Chambers to determine the competent forum, along with the requirement for approval for case dismissals, raises concerns about the balance between the autonomy of criminal prosecution and judicial oversight.

In conclusion, while Italy has made significant progress in aligning with the EPPO legal framework, ambiguities still persist that could hinder the effective and uniform application of European criminal justice. To address these issues, further legislative refinement will be necessary, along with ongoing dialogue between national and European authorities to ensure adherence to the principles of independence, equality, and legality. Greater clarity in

procedures and more robust safeguards will be essential for establishing a truly integrated and cohesive European Prosecution system.

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III. Poland

Part A: Issues of Administrative Law

1. *Updates on ESIF 2021-2027 and the incidence of irregularities and fraud affecting the NRRP*

The European Union Financial Perspective 2021-2027 introduced many significant modifications to Poland's structural and investment programmes. These changes aim to adapt the Cohesion Policy to the current socio-economic challenges and increase the efficiency of EU funds. As a beneficiary of the fourth perspective of the EU funds, Poland has received approximately EUR 76 billion for the Cohesion Policy, including EUR 72.2 billion from the Cohesion Policy and EUR 3.8 billion from the Fair Transition Fund (Ministry of Development Funds and Regional Policy, 2022). These funds are earmarked for investments in innovation, entrepreneurship, digitalisation, infrastructure, environment, energy, education, and social issues.

The following national programmes were introduced as part of the new financial framework.

- **European Funds for the Modern Economy (FENG)**: a continuation of the Operational Programme Intelligent Development 2014-2020, with a budget of around €8 billion, focusing on supporting business innovation, increasing the competitiveness of SMEs and the digital and green transformation of enterprises (Ministry of Development Funds and Regional Policy, 2022).
- **European Funds for Infrastructure, Climate, and Environment (FEnIKS)**: with a budget of €25.1 billion, covering investment in road, rail, public transport infrastructure and environmental and climate projects (Ministry of Development Funds and Regional Policy, 2022).
- **European Funds for Social Development (FERS)**: with a budget of €4.3 billion, focusing on education, labour market, social inclusion and health (Ministry of Development Funds and Regional Policy, 2022).
- **European Funds for Eastern Poland**: a continuation of the programme from the previous funding period, aimed at supporting the development of the macro-region of Eastern Poland, including strengthening the competitiveness of SMEs and the

development of sustainable urban mobility (Ministry of Development Funds and Regional Policy, 2022).

In the context of the National Recovery Plan (NRP), Poland has received almost €60 billion, including €25.27 billion in grants and €34.54 billion in concessional loans (National Reconstruction and Resilience Plan). These funds are earmarked for the implementation of reforms and investments in areas such as climate transformation, digitalisation, health care, and education.

In the context of the NRP, which aims to rebuild and enhance the economy's resilience after the crisis caused by the COVID-19 pandemic, cases of irregularities and fraud have been reported. In 2021, Poland reported thirty-six cases of irregular spending of EU funds to the European Commission, totalling almost €9.9 million, placing Poland fourth in the EU in terms of the amount of irregular spending. These abuses include, among others, corruption, conflict of interest, falsification of documents, and fraud in public procurement (European Commission, 2022).

The European Anti-Fraud Office (OLAF) has been actively involved in investigating cases of this kind. In February 2025, OLAF recommended the financial recovery of over €91 million intended for the purchase and delivery of power generators to areas in Ukraine affected by power shortages. The investigation uncovered serious irregularities in the procurement process, leading to a substantial financial recovery recommendation (European Anti-Fraud Office, 2025). Furthermore, an audit uncovered "corruption mechanisms" within the National Centre for Research and Development (NCBR), a Polish research funding agency. The Supreme Audit Office (NIK) highlighted alarming irregularities, especially considering the NCBR's role in distributing approximately €8 billion under the European Funds for a Modern Economy Programme. The findings have raised concerns about the effectiveness of administrative and criminal procedures in combating fraud related to EU funds in Poland (Science Business, 2023).

The Supreme Audit Office (NIK) also uncovered several irregularities related to the financing of public works in 2022-2023 from the NRP. It was found that a significant portion of the expenditure had been carried out outside the State budget and the public finance sector, thereby circumventing budgetary discipline. In 73% of the cases examined, funds from the general reserve were used inconsistently with their intended purpose, funding non-emergency tasks. Moreover, in 2023, the funds allocated to special purpose reserves rose to 17.5% of the

expenditure ceiling of the State budget and the budget of European funds, which raised concerns from the NIK regarding the transparency and legitimacy of the planning behind these reserves (NIK, 2024, p. 16).

It also emerged from the NIK's analysis that, in 2023, funds were planned and transferred in the form of treasury securities outside the State budget, resulting in an increase in the net borrowing needs of the State budget to PLN 137.6 billion, not including all outlays for the implementation of public tasks. At the close of 2023, there was a difference of more than 20% (PLN 363.1 billion) between the volume of public debt calculated according to EU rules and the volume of debt determined according to the national system, which undermines the credibility of the State budget deficit as an indicator of the State's financial health (NIK, 2024, p. 16).

The conclusions of the NIK report indicate the need to increase transparency and efficiency in the management of public funds and strengthen control mechanisms in implementing programmes financed by EU funds, including the NRP. Many control mechanisms and fraud reporting procedures have been implemented to counter these irregularities. The Polish Agency for Enterprise Development (PARP) is committed to combating fraud and corruption. In addition, institutions such as the Centre for European Projects of the Ministry of Internal Affairs and Administration (COPE MSWiA) have set up dedicated channels for reporting irregularities, allowing citizens to report potential fraud anonymously (Ministry of Development Funds and Regional Policy, 2023).

In conclusion, the changes to the EU structural programmes for 2021-2027 in Poland reflect the desire to meet contemporary challenges and optimise the use of available funds. At the same time, it is necessary to continuously monitor and improve control mechanisms to minimise the risk of irregularities and fraud in implementing the NRP.

2. *Control activity and institutional coordination: a suitable combination for protecting the EU's financial interests? A critical analysis of the Polish AFCOS model*

AFCOS was established in Poland to ensure an effective exchange of information between OLAF and national law enforcement and inspection authorities. The coordination of activities is the responsibility of the Department of Auditing of Public Funds (DAS) in the Ministry of Finance, which acts as the national contact point. According to the arrangements in place, the DAS's jurisdiction is, in principle, limited to the area of assisting OLAF in external

investigations concerning EU funds spent under shared management. In justified cases, acting according to the principle of loyal cooperation, the DAS Department also collaborates with OLAF on certain aspects of internal investigations and cases concerning irregular expenditure of funds implemented by the EC under direct management. In these areas, the Polish AFCOS unit acts within the limits of its competence, coordinating, where appropriate, the circulation of information at the national level. For this reason, AFCOS also systematically strengthens cooperation with other institutions responsible for the implementation of control and investigation activities in the field of protecting EU funds, such as the National Fiscal Administration (KAS), the Supreme Chamber of Control (NIK), and the Central Anti-corruption Bureau (CBA) (Serowaniec, M., Wilmanowicz-Słupczewska, N., Daśko, J., & Wantoch-Rekowski, 2024, p. 114).

One of the key aspects of AFCOS's effectiveness is its ability to identify and eliminate fraud. The Polish model is based on a complex system of cooperation between institutions, which is theoretically expected to increase the effectiveness of control activities. In practice, however, problems are often related to the fragmentation of competences and the lack of a coherent action strategy. An example is the insufficient coordination between the bodies responsible for controlling EU funds and law enforcement institutions, which hinders the rapid detection of irregularities and the conduct of investigations. One of the key problems is the lack of properly integrated IT systems, which translates into difficulties in quickly analysing data and identifying irregularities. Existing controls require more advanced technological tools to analyse big data and detect financial fraud patterns more efficiently. Investing in the development of artificial intelligence and risk-predictive algorithms could significantly enhance an institution's ability to respond pre-emptively to potential risks. For example, risk analysis, which identifies potential areas of fraud, is an important tool for supporting control. However, in Poland, its effectiveness is limited by the lack of access to comprehensive databases and insufficient integration of IT systems.

An additional problem is the insufficient funding and staffing resources of audit institutions. Many experts emphasise that limited budget resources affect the quality of audits and the response time to reported irregularities. Strengthening the training system and increasing the skills of officials responsible for supervising EU funds could significantly improve the effectiveness of audits and inspections. At the same time, the financial resources

allocated to control activities should be increased, allowing for the implementation of more detailed and in-depth analyses of cases suspected of fraud.

Improving the effectiveness of control mechanisms also requires closer cooperation with NGOs and the private sector, which can provide valuable information on potential risks and fraud mechanisms. Joint initiatives could help to raise awareness of the problem and strengthen preventive control activities (M. Serowaniec, M. Wilmanowicz-Słupczewska, N. Daśko, J. Wantoch-Rekowski, 2024, p. 112-115).

The Polish AFCOS is an important component of the system protecting the EU's financial interests, but it still requires significant improvements. Problems related to the fragmentation of competences, delays in the exchange of information and lack of effective coordination of activities may undermine the system's effectiveness. To ensure better protection of EU funds, further improvements in control procedures and international cooperation are needed. Only then will institutional coordination and control activities be able to effectively protect the EU's financial interests (M. Serowaniec, N. Daśko, 2024, p. 109-115).

3. *News on the NRRP side: anti-money laundering and anti-terrorism, conflicts of interest, double*

Under the NRRP, several administrative initiatives and procedures have been introduced to increase transparency and efficiency in the management of public funds. Poland has implemented enhanced due diligence requirements for NRRP fund recipients, ensuring that all applicants undergo rigorous financial scrutiny before receiving grants or loans. This includes verifying beneficial ownership structures and screening against EU sanctions lists. Additionally, financial institutions processing NRRP-related transactions must report suspicious activities to the General Inspector of Financial Information (GIIF), which collaborates with EU authorities such as Europol and the European Public Prosecutor's Office (EPPO) to investigate cross-border money laundering schemes. Particular emphasis is placed on anti-money laundering, terrorist financing, managing conflicts of interest, and preventing double financing. These activities are closely linked to the Guidelines on the Conditions for Collecting and Transmitting Electronic Data 2021-2027, which set standards and procedures.

3.1. *Anti-Money Laundering and Countering the Financing of Terrorism*

The prevention of money laundering and terrorist financing is a key component of the system for protecting the economy and public finances in Poland and the European Union. In implementing the National Recovery Plan (NRP) 2021-2027, several administrative measures have been taken to minimise the risk of these phenomena. These procedures are outlined in the Guidelines on the conditions for collecting and transmitting data in electronic form for 2021-2027, which provide a framework for the transparent and efficient use of financial resources under EU and national funds. These procedures require detailed documentation and regular staff training on the applicable rules and risk identification methods (MONEYVAL Committee, 2024, p. 5).

The institution responsible for supervising the implementation of anti-money laundering procedures in Poland is the General Inspector of Financial Information (GIIF). The Central Information and Communication System (CST2021), which enables the control of financial flows and the identification of suspicious transactions, also plays a key role within the NRP (MONEYVAL Committee, 2024, p.p. 5-7).

The 2021-2027 Guidelines require NRP beneficiaries to implement procedures to identify, assess, and manage risks related to money laundering and terrorist financing. As part of these procedures, the following arrangements have been implemented: NRP beneficiaries are required to apply financial security measures, which include:

- Verification of the identity of the beneficial owners
- Analysis of ownership structures and financial relationships
- Checking entities on sanction lists and AML registers

The 2021-2027 Guidelines emphasise the importance of using modern ICT systems to monitor and analyse financial transactions. The Central Telecommunication and Information System (CST2021) plays a key role in collecting, processing and analysing data related to implementing NRP-funded programmes. This system enables the ongoing monitoring of financial flows, the identification of irregularities and the rapid response to potential money laundering or terrorist financing threats. These mechanisms include:

- Automatic analysis of large transfers and unusual financial operations
- Early warning system for suspicious activities
- Cross-checking declared project costs with public administration databases

Entities using NRP are obliged to report any suspicious transactions to the GIIF. This applies to operations that may indicate an attempt to conceal the origin of funds or their use for criminal purposes. These procedures include:

- Documenting and analysing suspicious financial operations
- Automatic generation of reports and sending them to supervisory institutions
- Cooperation with law enforcement and international institutions

CST2021 is a state-of-the-art tool designed to support the oversight of public funds by enabling:

- Transparent and uniform financial management within the NRP
- Detecting anomalies and financial fraud through advanced data analysis algorithms
- Integration with national and international AML databases

The system also allows for close cooperation between public administrations, increasing the effectiveness of preventive and control measures.

3.2. *Managing conflicts of interest*

Conflicts of interest remain a critical challenge in the implementation of Poland's NRRP, with reports indicating preferential treatment in grant allocation and public contracts. The European Commission has repeatedly called for stronger governance mechanisms to prevent undue influence in fund distribution (European Commission, 2022). One major concern is the involvement of politically connected individuals in advisory and decision-making roles, which has led to questionable allocations favouring certain entities over others (European Parliament, 2023). The 2021-2027 Guidelines on electronic data collection and transmission modalities indicate the need for procedures to identify, avoid, and manage conflicts of interest. These rules are based on national legislation, such as the Public Finance Act, and on EU regulations governing the expenditure of European funds. Institutions managing NRP funds and entities participating in their distribution are obliged to conduct analyses to detect potential conflict situations. The basic identification mechanisms include:

- Declarations of interest – individuals involved in evaluating projects and awarding funds are required to make written declarations of interest to the applicants being evaluated

- ICT systems – the use of the Central ICT System (CST2021) allows for the analysis of links between individuals and entities, as well as the automatic identification of risks related to conflicts of interest
- Business relationship analyses – Beneficiary verification procedures may include an analysis of capital and personnel links between companies and their board members

Avoiding conflicts of interest is a fundamental objective in the management of public funds. The following preventive measures are used to minimise the risks:

- Rotation of project evaluators – limiting one person's time working on specific projects reduces the risk of personnel ties
- If a conflict of interest is detected, an individual involved in the decision-making process may be removed from the case
- Training for administrative staff through regular courses and workshops increases awareness of risks and knowledge of procedures for dealing with conflicts of interest

Where a conflict of interest is detected, corrective action is required, such as the annulment of administrative decisions taken under conditions of conflict of interest, the reconsideration of the application by independent experts or an audit of the decision-making procedure.

Audit and control systems are important for addressing conflicts of interest within the NRP. Institutions overseeing the use of public funds, including the Supreme Audit Office and audit units in ministries, conduct regular audits to detect and eliminate irregularities related to conflicts of interest. Audits may include analysing financial records, interviewing people involved in managing funds and using analytical tools to identify suspicious links.

Conflict of interest management also supports CST2021 by ensuring transparency in decision-making processes and enabling monitoring of project activities. The system allows the recording and analysis of data on individuals involved in projects, which facilitates the identification of potential conflicts of interest and taking appropriate preventive action.

3.3. *Preventing double financing*

Double financing consists of declaring the same expenditure for settlement under more than one source of financing, which is not in line with the rules governing the management of public funds. In order to prevent this under the NRP, Poland has adopted an integrated financial

monitoring system that links all applications for funding under various EU programmes. This system automatically detects potential overlapping funding and requires beneficiaries to certify that their expenditures are not duplicated across multiple funding streams (Ministry of Development Funds, 2024). Beneficiaries must maintain detailed and transparent financial records that identify the funding sources for individual expenditures. Each expense must be attributed to a specific project and source of funding, ensuring that the same cost is not accounted for under different programmes.

In addition, on-the-spot checks and ex-post verifications have been intensified, focusing on the sectors most exposed to double funding, such as infrastructure, innovation, and digital transformation. This is illustrated by the example of a regional transport infrastructure project, where auditors discovered discrepancies in reported expenditure under both the NRP and the Cohesion Fund. This discovery led to recovery actions and the implementation of stricter reporting guidelines for project implementers (European Commission, 2022).
Modern ICT systems have been implemented to closely monitor the flow of funds and eliminate the risk of double funding. The Central ICT System (CST2021) is one of the key tools that supports public institutions in managing the uniqueness of declared expenditures. Thanks to this system, it is possible to identify cases where the same costs have been declared for reimbursement in different programmes or under different financial instruments.

CST2021 also enables data exchange between institutions responsible for implementing EU funds and national programmes. The integration of databases allows automatic comparison of beneficiaries' financial records and the detection of possible irregularities even before funds are granted. Each funding institution must report and archive information on funds allocated and expenses incurred, which increases control over the project funding process.

4. Irregularities in the expenditure of funds from the National Recovery Plan in the light of reports by the Supreme Audit Office (2022-2023)

In recent years, the Supreme Audit Office (NIK) has conducted several audits on the implementation of programmes financed by European funds. An analysis of the Supreme Audit Office's (NIK) reports has revealed irregularities in the management and spending of EU funds and funds from the National Reconstruction and Resilience Plan (NRP) in Poland. In 2023, the expenditure of the European funds budget amounted to PLN 75.1 billion, which was only

60.9% of the plan. The low level of implementation of NRP expenditures, amounting to less than 3% of the planned funds, raises concerns about the ability to use the available funds by 31 August 2026. The 2023 NIK activity report also noted that the total financial and reporting impact of irregularities amounted to PLN 52.8 billion, including more than PLN 28 billion in funds improperly spent or accounted for (NIK, 2024, p. 39). While these figures cover a wide range of programmes and initiatives, they indicate the scale of the problem and the need to strengthen control mechanisms in the context of NRP implementation.

The Supreme Audit Office notes that in 2022-2023, the Ministry of Development Funds and Regional Policy, as the coordinating institution for the National Plan for Reconstruction and Increasing Resilience, undertook measures to prepare for the use of EU funds; however, these measures were not fully effective. Despite having a system for collecting data and reporting the National Plan for Reconstruction and Increasing Resilience, the Ministry of Funds and Regional Policy did not know the amounts spent on individual investments. Nor did it have reliable information on the amounts involved: the value of contracts signed and competitions decided, or on competitions, tenders or ongoing calls for proposals. It was also found that the data collected in the IT system designed to support the National Reconstruction and Resilience Plan was outdated and incomplete. The Supreme Audit Office found monitoring investments made under this plan to be unreliable.

Between 2022 and 2023, 20.7% of the National Recovery and Resilience Plan metrics were achieved. 8.9% of the metrics had not been completed, and the remaining metrics were in the implementation phase. As of 31 December 2023, 36 measures (11.5%) were delayed. Nevertheless, the Supreme Audit Office draws attention to significant delays in the preparation and implementation of the plan. The low level of funding committed to Poland by the European Union poses a significant risk of non-use by 31 August 2026. A significant reason for the delays in implementing the National Plan for Reconstruction and Increasing Resilience was the lack of funds for pre-financing the tasks intended to be funded by the loan component. In four units, delays caused by the lack of funding sources were found to jeopardise the timely implementation of the development plan (NIK, 2024, pp. 39-40).

One of the areas in which NIK has identified irregularities is the improper planning and spending of European funds by public institutions. For example, an audit of the budget implementation in the health sector found that twenty-five earmarked grants worth PLN 77.5 million were given to research institutes for investment purposes, violating the applicable

regulations (NIK, 2024, p. 40). Such actions may lead to inefficient use of funds and delays in implementing key projects under the NRP.

In addition, NIK drew attention to delays in blocking part of the budget expenditures and the unintentional and wasteful spending of funds. In one case, there was a delay of more than six months in blocking expenditures worth PLN 15 million and wasteful spending of PLN 1.1 million on implementing activities that did not produce the expected results (NIK, 2024, p. 40). Such situations highlight the need for stricter public financial management procedures and more effective oversight mechanisms.

The NIK further indicates that a significant proportion of public tasks and activities related to the NRP were financed outside the State budget, bypassing standard budgetary procedures and parliamentary control. In 2022-2023, there were cases of funds transfers in the form of treasury securities with a nominal value of PLN 21.6 billion, raising doubts about transparency and compliance with public finance rules.

In implementing investments financed by public funds, NIK found numerous irregularities at all stages of the investment process. For example, an audit of sixteen significant investments in six voivodeships (administrative regions) showed that fourteen were implemented incorrectly, including some that were not included in the project documentation. Negligence in two investments could have endangered people's lives and health or the safety of facilities. Cases of failure to meet deadlines for completing tasks and violations of the Public Procurement Law were also found, leading to expenditures of nearly PLN 450 million in violation of the law.

NIK reports indicate the existence of numerous irregularities in the management of NRP funds in Poland, covering both funding and investment implementation issues. It is necessary to introduce more effective mechanisms for controlling and supervising the disbursement of public funds to ensure their transparency, legality, and effectiveness in achieving reconstruction goals and increasing the country's resilience.

In the context of implementing the NRP, NIK plans to intensify its audit activities to ensure transparency and efficiency in fund spending. The President of the NIK announced that the Chamber will closely monitor expenditures related to the NRP and other key initiatives. These activities aim to detect and eliminate potential irregularities and fraud early (NIK, 2024, p. 41).

To reduce the risk of irregularities in implementing the NRP, it is essential to enhance the internal control systems of the institutions responsible for managing and executing projects funded by these resources. It is also necessary to increase the transparency of decision-making processes and ensure that progress on the implementation of individual measures is reported regularly and in detail. Cooperation between the NIK and other auditing bodies at both the national and European levels will be essential for effective monitoring and ensuring compliance with the NRP objectives.

5. *Digital tools and risk-oriented controls (especially controls concerning individuals and enterprises)*

In the context of implementing the NRP in Poland, effective management and control of the disbursement of EU funds are crucial. A key tool to support these processes is the Central ICT System CST2021, which replaced the former SL2014 system. CST2021 was designed to improve the management of projects co-financed by European funds in the 2021-2027 financial perspective, ensuring compliance with EU and national regulations while increasing the transparency of financial processes.

The CST2021 system consists of several modules dedicated to various aspects of project management. The WOD2021 (Grant Application) module supports the process of applying for funds and enabling the preparation and submission of grant applications as well as the management of project calls. Once projects have been approved, the SL2021 Projects module envisages ongoing monitoring of implementation, submission of payment applications, and communication between beneficiaries and supervising institutions. This makes the project settlement process more transparent and efficient.

In the context of ensuring the competitiveness and transparency of public procurement, the BK2021 module (Competitiveness Database) allows the publication of procurement notices and the collection of bids from contractors. This tool supports the implementation of the competitiveness principle by enabling electronic communication between beneficiaries and bidders and archiving the entire process

A key component in the system is the e-Controls module, dedicated to teams responsible for project control. It enables the management of the control process, documentation of results, and monitoring of the implementation of post-control recommendations. The e-Controls module within the CST2021 Central IT System plays a key role in managing the process of

controlling projects co-financed from EU funds. Its main objective is to streamline and unify control activities by providing tools for planning, carrying out and documenting controls, thereby increasing the efficiency and transparency of the entire process.

The e-Controls application was designed to assist implementing authorities and intermediaries in managing and conducting controls on beneficiaries. The system allows users to register control results, manage post-control documentation, and monitor the implementation of recommendations, among other features. As a result, regulatory institutions can supervise project implementation in an orderly fashion and in accordance with current regulations. An important aspect of using the e-Controls module is adherence to the procedures for documenting control results. Employees responsible for this process must enter control data into the External Audits module, ensuring that all mandatory fields are completed, including project number, beneficiary name, control date, and control result. The accuracy and timeliness of the information entered are crucial for maintaining the integrity of the audit process.

Specialised training courses are organised for controllers to ensure the correct and effective use of the e-Controls application. These courses include a discussion of the functionality of the CST2021 system, a detailed presentation of the e-Controls application and an analysis of EU and national regulations concerning the control process at beneficiaries. Participants gain knowledge of the latest regulation changes and the practical skills necessary to use the application efficiently. Access to the e-Controls module is via the central login portal CST2021, which enables users to use the various applications within the system without logging in several times. This enables users to move seamlessly between the different modules, increasing convenience and efficiency. Implementing the e-Controls module in the CST2021 system is a significant step towards the digitalisation of control processes in Poland. This makes it possible to increase the efficiency of control activities and improve transparency and compliance with EU and national regulations on the management of European funds.

The SKANER module is an integral component of the Central Information and Communication System CST2021, designed to verify the entities and individuals involved in projects co-financed by EU funds. Its main task is to identify potential conflicts of interest and eliminate irregularities by analysing data from various registers and databases. The module's operation is based on integration with key registers, such as the National Court Register (KRS), the Central Register and Information on Economic Activity (CEIDG), and the Central Register of Real Beneficiaries (CRBR). As a result, SKANER can effectively analyse relationships

between entities and individuals, which allows for detecting potential conflicts of interest and other irregularities. Users of the SKANER module, including managing, intermediary and control institutions, can carry out detailed analyses and reports on capital, personal relationships and the history of entities. This tool supports decision-making processes, minimising the risk of irregularities in implementing projects co-financed using EU funds. Access to the SKANER module is provided via the central login portal, CST2021, which ensures uniform and secure access to all the applications included in the system. Users must have appropriate rights assigned to them by system administrators to guarantee control over sensitive data access.

The implementation of the SKANER module within CST2021 is an important step towards increasing the transparency and efficiency of the management of European funds in Poland. The automation of verification processes and integration with key registers allow the effective monitoring and elimination of potential irregularities, contributing to a better use of EU funds and increased trust in the institutions that manage them.

The CST2021 system also ensures data security, integrity, confidentiality, and user authentication through the SZT2021 (Identity Management System) module. External (beneficiaries) and institutional users have access to the system according to their assigned permissions, thereby increasing control over access to sensitive information.

The implementation of CST2021 aligns with EU requirements for electronic data exchange between institutions and beneficiaries. It offers several features, including interactive forms, automatic calculations, and the ability to track project status online. This approach not only simplifies administrative procedures but also increases the efficiency of managing EU funds while reducing the risk of irregularities.

The operation of the CST2021 system is governed, inter alia, by Regulation (EU) No 2021/1060 of the European Parliament and of the Council of 24 June 2021, the Act of 28 April 2022 on the principles of the implementation of tasks financed from European funds in the financial perspective 2021-2027 and the Guidelines on the conditions for collecting and transmitting data in electronic form for 2021-2027. This ensures that the system complies with current legal and technological standards, which ensures its effectiveness and reliability in monitoring the disbursement of funds from the NRP.

Part B: Issues of Criminal Law

6. *Introduction*

A previous study within the BETKONEXT Project (M. Serowaniec, M. Wilmanowicz-Słupczewska, N. Daśko, J. Wantoch-Rekowski, 2024, 116 et seq.) analysed the issues of transposing the PIF Directive into Polish criminal law concerning the offences specified in Articles 3, 4 and 5(1). It was observed that there is an apparent lack of symmetry in Polish regulations and a need to look for several provisions to identify particular types of offences under the PIF Directive. Gaps in transposition were also signalled, including the lack of criminalisation in the national legal order – as noted in scholarship – of the behaviour consisting in non-disclosure of information in breach of a specific obligation at the stage of granting financial support (C. Nowak, 2023, 141; M. Serowaniec, M. Wilmanowicz-Słupczewska, N. Daśko, J. Wantoch-Rekowski, 2024, 116 et seq.), as well as objections to the criminalisation of behaviour involving the misuse of funds or assets for purposes other than those for which they were originally granted and the misuse of lawfully obtained benefits resulting in damage to the financial interests of the EU (doubts under Article 297 of the Criminal Code and Article 82 of the Fiscal Criminal Code) (I. Sepiol-Jankowska,2020, 158-159; A. Adamski, 2004, 5; C. Nowak, 2023, 143-145; L. Wilk, 2010, M. Serowaniec, M. Wilmanowicz-Słupczewska, N. Daśko, J. Wantoch-Rekowski, 2024, 116-117).

However, the PIF Directive contains other provisions in the field of substantive criminal law, relating, for example, to stadial forms, jurisdiction, and the liability of collective entities regarding which inconsistencies can be identified in the Polish regulations.

7. *The remaining issue of transposition – the lack of criminalisation of inchoate crimes in the Fiscal Crimes Code*

As has been pointed out, the inconsistency of Polish regulations is evident with regard to the criminalisation of inchoate offences under the Fiscal Crimes Code, i.e. with regard to fiscal offences (M. Serowaniec, M. Wilmanowicz-Słupczewska, N. Daśko, J. Wantoch-Rekowski, 2024, 117-118). This is all the more important because it is in the Fiscal Criminal Code that Article 82, which criminalises the exposure of public finances to depletion through undue payment, collection, or misuse of a subsidy or subvention, is found.

This offence is only subject to a penalty of up to 240 day-fines, which is another inconsistency discussed earlier. Article 5(2) of the PIF Directive requires Member States to ensure that the attempted offences referred to in Articles 3 and 4(3) are punishable as such. This principle is fully implemented with regard to common offences as, according to Article 14(1) of the Criminal Code, courts must punish attempts within the limits of the threat provided for the offence. On the other hand, according to Article 21(1) of the Fiscal Crimes Code, attempting a fiscal offence punishable by up to one year of imprisonment or a lesser penalty is punishable only if the Code provides for it. In the case of Article 82 of the Fiscal Crimes Code, the criminalisation of attempts is not provided for, as it is for many other fiscal offences. It is therefore rightly pointed out in the literature that the PIF Directive does not provide for such derogations; consequently, the Polish regulations are not in line with it in this respect (C. Nowak, 2023, 174; M. Serowaniec, M. Wilmanowicz-Słupczewska, N. Daśko, J. Wantoch-Rekowski, 2024, 117-118). The legislator has not yet acted to remove the identified inconsistency.

8. *The remaining issue of transposition: jurisdiction*

Another perceived inconsistency concerns jurisdiction. The PIF Directive provides mandatory and optional jurisdiction grounds for the offences referred to in Articles 3, 4, and 5. Regarding the mandatory grounds, Article 11(1) of the PIF Directive states that jurisdiction should be based on territoriality and nationality. In the case of Poland, the implementation of the principle of territoriality does not raise any objections (C. Nowak, 2023, 185-186): it is defined respectively by Article 5 of the Criminal Code in the case of common offences (Polish Criminal Law applies to perpetrators of criminal acts on the territory of the Republic of Poland, or a Polish ship or aircraft unless an international agreement to which the Republic of Poland is a party provides otherwise) and Article 3 of the Fiscal Crimes Code in the case of fiscal offences (para. 2. “The provisions of the Code shall apply to an offender who has committed an offence in the territory of the Republic of Poland as well as on a Polish vessel or aircraft unless the Code provides otherwise”).

On the other hand, regarding the principle of nationality, it is important to note that the Polish Criminal Code states that Polish criminal law applies to Polish citizens who commit an offence abroad (Article 109 of the Criminal Code), but only if the act is also considered an offence under the law of the location where it occurred, according to the principle of double

criminality (Article 111 § 1 of the Criminal Code). This condition does not apply, among others, to Polish public officials who, while on duty abroad, commit an offence related to their functions, nor to a person who has committed an offence in a location not under any State authority (Article 111 para. 3 of the Criminal Code). The scholarship rightly emphasises that the restriction of the principle of dual criminality is incompatible with the PIF Directive. Such a restriction is no longer included in the Fiscal Crimes Code, which states in Article 3(3)(a) that, regardless of the provisions in effect where the fiscal offence occurs, the provisions of the Code also apply to Polish citizens when a fiscal offence defined in Chapters 6 and 7 of Chapter II of Title I, aimed at protecting the financial interests of the European Communities, is committed abroad. This rule is unlimited, as stated in Article 11(4) of the PIF Directive (C. Nowak (2023, pp. 185-186).

The principle of double criminality is one of the foundational concepts in Polish criminal law. For several reasons that go beyond the scope of this report, there is no justifiable propose for removing it from the Criminal Code. However, it appears that to fully implement the PIF Directive, it would be reasonable to propose the introduction of a similar exception to the principle of double criminality in the Criminal Code, following the example set by Article 3 §3a of the Fiscal Criminal Code.

Concerning the optional grounds of jurisdiction, Article 11(3) of the PIF Directive specifies that a State may extend its jurisdiction to the offences referred to in Articles 3, 4, or 5 committed outside its territory when: a) the offender is habitually resident in its territory; b) the offence was committed for the benefit of a legal person established in its territory; or c) the offender is an official, acting in the performance of his or her duties. Of the grounds indicated, only that set out in (b) is pursued by Poland, and solely when the person who committed the offence for the benefit of a legal person established in Poland is subject to the jurisdiction of the Polish criminal courts (C. Nowak, 2023, 187).

9. *The remaining issue of transposition – the liability of collective entities*

According to Article 6 of the PIF Directive, Member States must ensure that legal persons can be held liable for the offences referred to in Articles 3, 4 and 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on a power of representation of the legal person, an authority to take decisions on behalf of the legal person, or authority to exercise

control within the legal person, and where the lack of supervision or control by such a person has made possible the commission of an offence by a person acting under the authority of the legal person for the benefit of the legal person

The PIF Directive does not pre-establish what type of liability for legal persons should be adopted by Member States; it may involve criminal, administrative, or civil liability. The Polish model of liability for legal persons is specific and resembles criminal liability. It is regulated by the Act on Liability of Collective Entities for Acts Prohibited by Penalty (Act of 28 October 2002 on Liability of Collective Entities for Acts Prohibited by Penalty, Journal of Laws of 2024, item 1822). Regardless of the liability regime, the regulations concerning the liability of legal entities should be effective. As mentioned in an earlier report (M. Serowaniec, M., Wilmanowicz-Słupczewska, N., Daśko, J., and Wantoch-Rekowski, 2024, p. 118), the Polish model of liability for collective entities is ineffective, which does not contribute to the protection of EU financial interests (C. Nowak, 2023, 182-185, 257). There is no doubt that collective entities may be involved in committing offences detrimental to the EU's financial interests. Several examples of such involvement can be identified. Firstly, criminal groups or individual criminals may set up a new economic entity only to use it to obtain EU funds. Such an entity can be termed a 'shell', designed for criminal purposes from the start. However, entities originally operating legally can also be exploited in such a way. This situation may relate to the extension of the collective entity's activities to those detrimental to the EU's financial interests to the benefit of those entities. However, it may also relate to the activities of persons directing or representing such a collective entity who use it for activities detrimental to the EU's financial interests, but for their own benefit.

In the light of Polish regulations, pursuant to Article 3 of the Act on Liability of Collective Entities, a collective entity is liable for a prohibited act carried out by a natural person: 1) acting on behalf of, or in the interest of, the collective entity under an authority or duty to represent the collective entity, make decisions on its behalf or exercise internal control, or exceeding that power or failing to fulfil that duty; 2) allowed to act as a result of exceeding the power or failing to fulfil the duty by a person, referred to in subsection 1, 3) acting on behalf of, or in the interest of, the collective entity with the consent or knowledge of the person referred to in subsection 1, 3a) being an entrepreneur who directly cooperates with the collective entity in the pursuit of a legally permissible objective – if the conduct has, or could have, benefited the collective entity, even if not materially. According to Article 5 of the Act,

a collective entity is subject to liability if the commission of a prohibited act occurred under the following circumstances: (1) at least a lack of due diligence in the selection of a natural person referred to in Article 3(2) or (3), or at least a lack of due supervision of that person – on the part of an authority or a representative of the collective entity, and (2) the organisation of the collective entity's activities, which did not ensure the avoidance of the commission of a prohibited act by a person referred to in Article 3(1) or (3a), whereas this could have been ensured by the exercise of due diligence – as required under the circumstances – by an authority or a representative of the collective entity.

The liability of collective entities is secondary in Poland. According to Article 4 of the Act, a collective entity is subject to liability if a prohibited act committed by a person referred to in Article 3 has been confirmed by a final judgment convicting them, a judgment conditionally discontinuing criminal proceedings, or proceedings for a fiscal offence against that person, a judgment granting that person permission to submit to liability voluntarily, or a court decision discontinuing proceedings against that person due to circumstances that would exclude punishment. In practice, it usually takes several years to obtain a conviction of this kind, as proceedings involving economic crimes tend to be longer and more complex than those involving ordinary criminal offences. After such a period of time, it is often pointless to impose sanctions on a collective entity, as it may no longer be functioning. However, its assets have already been removed.

As regards sanctions against legal persons, the PIF Directive indicates that they should be effective, proportionate, and dissuasive, including both criminal and non-criminal fines. It may provide for measures such as exclusion from entitlement to public benefits or aid; temporary or permanent exclusion from participation in public procurement procedures; temporary or permanent prohibition on engaging in commercial activities; placement under judicial supervision; judicial winding-up; and temporary or permanent closure of establishments used to commit the offence (Article 9).

Under Polish regulations, a court may, as a general rule, impose on a collective entity a fine of between PLN 1,000 and PLN 5,000,000, but not exceeding 3% of the revenue generated in the financial year in which the offence that gave rise to the collective entity's liability was committed (Article 7).

In the case of collective entities involved in committing offences against the EU's financial interests, the forfeiture of criminal assets is crucial. In the Polish system, the assets of

collective entities like companies are regarded as separate from those of their partners. Consequently, the Act allows and regulates the issues of adjudicating against a collective entity the forfeiture of objects originating, at least indirectly, from a forbidden act or which served, or were intended for, the commission of a forbidden act, financial benefit originating, at least indirectly, from a forbidden act or the equivalent of objects or financial benefit originating, at least indirectly, from a forbidden act.

According to Article 9 of the Act, a collective entity may be subject to, among other things, a prohibition on promoting or advertising its business activities, products manufactured or sold, services rendered, or benefits offered; a prohibition on receiving grants, subsidies, or other forms of financial support from public funds; a prohibition on receiving assistance from international organisations of which the Republic of Poland is a member, a prohibition on applying for public contracts, or a prohibition on making a judgment public. However, what the Act lacks is, as outlined in Article 9(c), the provision to impose a temporary or permanent ban on economic activity, (d) placement under judicial supervision, (e) judicial liquidation, and (f) temporary or permanent closure of establishments used to commit the offence. Admittedly, based on the Criminal Code, some of these measures, or similar measures, may be imposed on the perpetrator of the offence – a natural person. For example, the prohibition specified in Article 39(2) of the Criminal Code prohibits occupying a specific position, practising a specific profession, or carrying out a specific economic activity. According to Article 44a para. 1 of the Criminal Code, in the event of a conviction for an offence from which the perpetrator has obtained, albeit indirectly, a material benefit of significant value, the court may order the forfeiture of an enterprise owned by the perpetrator or its equivalent if the enterprise was used to commit the offence or to conceal the benefit obtained from it. On the other hand, according to Article 44a para. 2, in the event of a conviction for an offence from which the perpetrator has obtained, even indirectly, a financial benefit of significant value, the forfeiture of a natural person's enterprise not owned by the perpetrator, or its equivalent, may be ordered if the enterprise served as a means of committing the offence or concealing any benefit gained, or if the owner intended to use the enterprise to commit the offense or conceal the benefit gained therefrom. Otherwise, if the owner consented to it, foreseeing such a possibility. However, the solutions outlined in the PIF Directive would be more effective. It is proposed that the option of judicial liquidation and other measures outlined in Article 9 of the PIF Directive be directly incorporated into the Law on Liability of Collective Entities.

As indicated at the beginning, the main problem with the liability of collective entities in Poland is the inefficiency of regulation. Despite the prevalence of collective entities being used in various ways for criminal acts, including those affecting the financial interests of the EU, the number of cases brought against these entities is negligible. Between 2016 and 2021, prosecutors submitted a total of fifty-four applications for the liability of collective entities (apart from the 'record' years 2016 and 2021, in 2017-2020, there were barely 2-3 applications per year). In the case of thirty-three of these applications, the courts found the collective entity liable, and in fourteen cases, they did not grant the prosecutor's application. Moreover, the statistics show that the penalties imposed on collective entities were minimal and primarily affected small collective entities. A comparison of the years 2006-2019 shows that during this period, the highest fine imposed by the courts was PLN 70,000, while the most frequent fine, imposed in forty-five cases, was PLN 1,000. As for criminal measures, between 2006 and 2019, the courts decided seven times to make a verdict public, six times to impose a forfeiture of financial gains, and once to impose a forfeiture of equivalent objects, in addition to a fine. Other measures were not applied even once from 2006 to 2019 (Regulatory Impact Assessment to the Draft Act on Amendments to the Act on Liability of Collective Entities for Criminal Offences of 22 August 2022).

The ineffectiveness of the Act on the Liability of Collective Entities for Criminal Offences is recognised in both scholarship and practice. Over the last few years, several attempts have been made to amend the Act, including a concerted effort in 2019; however, these attempts have failed. Despite failure to amend the law, there have been recent attempts to improve the situation. For example, in early 2024, the Deputy Prosecutor General issued an order requiring Regional Prosecutors to increase the effectiveness of the prosecutors' offices in applying the provisions of the law, although the content of the order focused mainly on acts against the environment. Undoubtedly, as the quoted statistics show, the Polish model of liability for collective entities does not work and does not guarantee proper protection of EU financial interests. Therefore, in this respect, the transposition of the PIF Directive into the Polish legal order cannot be considered correct. After all, formal compliance with the requirements of the PIF Directive does not contribute to the effective prosecution of violations against the protection of the EU's financial interests, since these provisions are dead. Additionally analysing the statistics for fines and other penalties imposed on collective entities,

it is impossible to conclude that they are effective, proportionate, and dissuasive, as required by Article 9 of the PIF Directives.

10. *Procedural aspects – the EPPO*

As already observed out, the abuse of the European Union's financial interests has changed in recent years. Firstly, this type of crime is increasingly being taken over by organised crime groups that infiltrate the legal economy and often obtain or use EU funds through professional intermediaries. Secondly, this crime is becoming more transnational in nature (European Parliament, Protection of the EU's Financial Interests - Fight Against Fraud - Annual Report 2021). European Parliament resolution of 19 January 2023 on the Protection of the European Union's financial interests - Fight against fraud - Annual report 2021 (2022/2152(INI)), recitals 18-20. Effective prosecution of crimes committed by transnational criminal groups has been hampered in countries that remain outside the EPPO structures. To date, the cooperation between Polish law enforcement authorities and the EPPO has been solely of a technical nature, being conducted through the National Public Prosecutor's Office. This has made it difficult, if not impossible, to carry out multi-pronged prosecutions for crimes committed in more than one EU Member State by transnational criminal groups.

After the 2023 elections, the new Government started working towards joining the EPPO (M. Serowaniec, M. Wilmanowicz-Słupczewska, N. Daśko, J. Wantoch-Rekowski, 2024, 119-120). On 5 January 2024, based on Article 331(1) TFEU, Poland notified the Council of the European Union and the European Commission of its intention to participate in the greater cooperation already taking place regarding the establishment of the European Public Prosecutor's Office. With its decision of 29 February 2024, the EU confirmed Poland's participation in greater cooperation on the establishment of the EPPO, stating that Regulation (EU) 2017/1939 applies in Poland to all offences falling within the remit of the European Public Prosecutor's Office and committed after 1 June 2021. Subsequently, on 12 December 2024, the Council of the European Union, in accordance with Article 16(3) of Regulation (EU) 2017/1939, appointed a European Public Prosecutor from Poland. At the same time – on 12 December 2024 – the Government submitted a draft amendment concerning several laws to the Sejm, namely, the Act of 6 June 1997 - Code of Criminal Procedure; the Act of 28 January 2016 - Law on the Public Prosecutor's Office; the Act of 18 December 1998 on employees of the courts and the Public Prosecutor's Office; and the Act of 27 August 2004 on health care

services financed using public funds. The amendments to these acts result from the need to regulate certain issues arising from Regulation 2017/1939 at the national level. The Sejm adopted the amending Act on 24 January 2025 – Act of 24 January 2025 amending certain acts in connection with the accession of the Republic of Poland to enhanced cooperation in the field of the European Public Prosecutor's Office (Journal of Laws 2025, item 304)), and the President signed it on 7 March 2025. The act entered into force 14 days after its promulgation.

Regarding the Act on Public Prosecutions, the most important changes concern the status in national law of the delegated European Public Prosecutor. In view of the requirements in Article 30 of Regulation 2017/1939 for delegated European Public Prosecutors to have jurisdiction to order or make a request to search a place or computer systems, request the surrender of documents, secure computer data, seize instrumentalities used in the commission of an offence, or seize the proceeds of an offence, the legislator considered that prosecutors appointed as European Public Prosecutors or as Delegated European Prosecutors would, in a normative sense, be fully-fledged procedural authorities with the same powers as national prosecutors within the limits set by Regulation 2017/1939. However, regarding subordination issues, the status of Delegated European Prosecutors differs from that of national prosecutors. In order to ensure the independence of delegated European Public Prosecutors, the legislator has decided that when conducting European and other proceedings under the jurisdiction set out in Regulation 2017/1939, a European Public Prosecutor is not subject to national superior prosecutors, except for orders of an organisational nature. The powers and duties of the superior in European proceedings, or in other proceedings conducted by the public prosecutor of the EPPO following the jurisdiction set out in Regulation 2017/1939, as well as other powers and duties regarding the public prosecutor of the EPPO in connection with the exercise of that office, must be exercised by the authorities specified in Regulation 2017/1939, in accordance with the provision (Article 95c). The legislator has also determined that the EPPO will only perform the tasks under Regulation 2017/1939 (Article 95e of the Act) and will therefore not conduct domestic proceedings.

A new section – XIIa Cooperation with the European Public Prosecutor's Office – has been added to the Code of Criminal Procedure. Among other matters, it defines European proceedings (i.e. criminal proceedings conducted or supervised by a prosecutor of the European Public Prosecutor's Office under the jurisdiction set out in Regulation 2017/1939) and national proceedings (previously undefined in the Polish system), designates the National Public

Prosecutor as the authority competent to resolve jurisdictional disputes between the EPPO and national prosecution authorities, and sets out rules on the admission of evidence.

According to Article 577c of the Code of Criminal Procedure, evidence collected in European proceedings is considered evidence in national proceedings, even if the evidentiary acts were conducted in another Member State of the European Union or under that State's regulations, as long as the manner in which the act was carried out does not violate the principles of the legal order of the Republic of Poland. The legislator clarified that this regulation pertains to a different situation than the one described in Article 37 of Regulation 2017/1939, as it relates to the admissibility of evidence obtained during European proceedings in national proceedings when the case conducted by the delegated European public prosecutor is transferred for further prosecution by the public prosecutor of the general public prosecution unit.

As mentioned earlier, the relatively small number of proceedings concerning crimes against EU financial interests in Poland indicates the low effectiveness of the prosecution of violations of EU financial interests in the country (M. Serowaniec, M. Wilmanowicz-Słupczewska, N. Daśko, J. Wantoch-Rekowski, 2024, 118-119). Joining the EPPO offers hope for a change in this trend. As the Government has repeatedly emphasised in its public positions and in the justification of the draft act, it will also strengthen Poland's position as one of the larger beneficiaries of funds from the EU budget, simultaneously providing effective protection of the EU's financial interests.

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IV. Belgium

Part A: Issues of Administrative Law

1. Introduction

On the institutional and administrative law side, the previous working paper (BETKONEXT D.1.3) addressed some of the topics examined under a comparative lens in this working paper. On the other hand, the latter focuses specifically on criminal law, particularly in Belgium and Spain.

Nonetheless, certain elements are presented in a general introduction to ensure coherence in the comparative analysis of this working paper and to support the development of critical conclusions. Two major updates are discussed below.

Belgium is one of the Member States that still does not have a National Anti-Fraud Strategy (NAFS) covering all expenditure sectors. However, it has indicated that discussions about adopting a NAFS are ongoing and has reported the existence of other anti-fraud strategies. In particular, Belgium has stated that it has adopted strategies at least at the sectoral, regional, and authority levels (35th PIF Report, 15, here). These strategies cover all sectors except the Recovery and Resilience Facility (RRF) and other shared management funds (data as of 2023, 35th PIF Report). Nevertheless, it is hoped that the Early Detection and Exclusion System (EDES) system (as well as ARACHNE and IMS) will be integrated at the national level to monitor the RRF (see below, in the section on digital tools).

Belgium is also among the Member States that evaluate their country as having a low incidence of fraud. As affirmed in the 35th PIF Report (here, 17), it remains difficult to determine whether low levels of reported fraud accurately reflect the success of specific anti-fraud measures. Several Member States, including Belgium, report having conducted a fraud risk analysis to understand the reasons for the low detection of suspected fraud. While half of the Member States that analysed their low fraud levels identified weaknesses in fraud detection, most indicated that successful interventions to prevent fraud are best achieved when a multi-stakeholder, multilevel approach is adopted. This is particularly true in Belgium, considering its form of government, as it fosters cooperation among all domestic, national, and international actors involved.

In the 35th PIF report, Belgium did not report having sufficient staff within its national anti-fraud coordinating structure, nor did it indicate a need to improve staff expertise levels. It is no coincidence that Belgium is among the countries with an anti-fraud cooperation network in place (35th PIF Report, 18, here). It is important to remember that the Ministry of the Economy serves as the contact point for OLAF, and, more specifically, the Interdepartmental Commission for the Coordination of the Fight against Fraud (*Commission Interdépartementale pour la Coordination de la Lutte contre les Fraudes dans les secteurs économiques, CICF/ICCF*) is the competent body. In fact, the Belgian Anti-Fraud Coordination Services (AFCOS) is a coordination platform that includes all Belgian authorities responsible for safeguarding the EU's financial interests, namely the Ministry of Finance, the Ministry of the Economy, the Ministry of Justice, the Customs Bureau, the regional agencies for agriculture, social funds, and regional development funds. The Director-General of the Inspection Department of the Ministry of the Economy chairs the meetings. Thus, the Belgian AFCOS is solely responsible for coordination and serves as the single contact point with OLAF. All requests from OLAF or other Member States are forwarded to the relevant authorities.

Consequently, the systems of administrative controls and criminal investigations for protecting the EU's financial interests align with those used for safeguarding national public resources, except for the special arrangements mandated by EU regulations for managing traditional European funds, such as ESIFs (see the BETKOSOL Project Deliverables for more details).

The situation surrounding the implementation, monitoring, and control of the RRF is currently unclear.

2. *The Whistleblower Protection Directive – the state of transposition*

Regarding updates on whistleblower protection in relation to the previous working paper, the Royal Decree of 20 October 2023 established the components of internal reporting procedures and follow-up, as well as the purposes and content for maintaining records of reports. It also set forth the arrangements for public consultation in accordance with the fourth subparagraph of Article 10(1), the third subparagraph of Article 11, the third subparagraph of Article 27(5), and the third subparagraph of Article 76 of the Law of 8 December 2022 on reporting channels and the protection of persons who report breaches of integrity within federal public-sector bodies and the local police force.

The main purpose of this Royal Decree is to define the components of internal reporting procedures and follow-up within federal public-sector bodies, as outlined in Article 6(1) of the above-mentioned Law of 8 December 2022. The latter closely aligns with the content of the Directive while also expanding on it by focusing on tax and social fraud, considering that social policies in the country are a key priority and receive the majority of resources from the European Union.

It is also important to note that prior to the transposition, Belgium lacked a comprehensive whistleblowing law. Two procedures existed in the private sector, specifically concerning financial markets and money laundering, while a law of September 2013 provided protection to whistleblowers working for federal administrative bodies.

Thus, the new measures introduced by the Law of 8 December 2022 extend protection to whistleblowers reporting breaches in a number of areas of EU law, including public procurement, financial services, transport safety, consumer protection, food and feed safety, product safety, and radiation protection and nuclear safety, among others (see here).

Most provisions of the Royal Decree, specifically Articles 2 to 13, relate to these procedures and follow-up (see here).

In accordance with Article 10(1)(1) of the Act of 8 December 2022, Article 2 states that every federal public-sector body must have an internal reporting channel through which a whistleblower may submit an internal alert.

According to Article 3, the internal reporting channel is as follows:

- managed internally by a designated person or department within the federal public-sector body itself
- managed externally,

a) either by a third party

b) or by the Federal Audit

to which the federal public-sector body has delegated the tasks assigned to the internal reporting channel.

To coordinate their activities and, where applicable, exchange information, the highest-ranking official of the federal public-sector body will notify the Federal Audit Office, the Federal Ombudsman, and the Minister responsible for public service of their decision to select one of the mentioned solutions.

For the “permanent partnership” between the Federal Audit Office and the federal public-sector bodies as established by Article 11 of the Act of 8 December 2022, the elements of the internal reporting and monitoring procedures are defined by this Royal Decree (Art. 4).

Each federal public-sector body must provide annual information on the implementation of the Act of 8 December 2022 and this Royal Decree to the Federal Public Service Strategy and Support. This service will then send an annual report to the Minister responsible for the civil service, who will in turn inform the representative trade union organisations.

This report must include at least:

1 the number of reports received

2 the number of reports declared admissible

3 the number of alerts investigated

4 an overview of the number of breaches of integrity detected

5 a description of the problems identified in the application of the Act of 8 December 2022 and this Order (Art. 5(1)).

The Minister responsible for the civil service may specify and develop the substantive and formal conditions for reporting (Art. 5(2)). For federal public-sector bodies that are members of the “permanent partnership” referred to in Article 4 of this Decree, the Federal Audit Office produces a joint report (Art. 5(3)). Federal public-sector bodies that are not part of the permanent partnership prepare individual reports (Art. 5(4)).

It is specified that any person performing the duties of an internal reporting channel must adhere to the general principles of good administration and act with integrity, objectivity, confidentiality, and professionalism. A member of staff carrying out the duties of an internal reporting channel may not undertake any other responsibilities that give rise to or could potentially lead to a conflict of interest (Art. 6). Article 11 also addresses administrative principles. It indicates that the general principles of good administration are applied, and the rights of the defence are upheld during the administrative procedure that follows the reporting. All actions and decisions are thoroughly and accurately documented and justified.

Regarding the administrative procedure for internal alerts, the use of various written and oral forms is guaranteed to anyone issuing an alert. The internal alert channel will acknowledge receipt of the alert in writing within seven days of its receipt, unless the originator expressly requests otherwise or the internal alert channel has reasonable grounds to believe that

acknowledging receipt of the alert would compromise the protection of the identity of the originator (Art. 7).

The internal alert channel assesses the admissibility of the internal alert (Art. 8).

The alert must contain at least the following information:

1 the name and contact details of the person issuing the alert, unless the person issuing it opts to issue an anonymous alert

2 the date on which the alert was issued

3 the nature of the working relationship between the person who issued the alert and the federal public-sector body

4° the name of the federal public-sector body concerned by the integrity breach

5° a description of the integrity violation

6° the date or period on which the integrity violation occurred, is occurring or is very likely to occur

The author of the alert must include all the information they have access to that may contribute to assessing the reasonable presumption of a breach of integrity. Without prejudice to these previous commitments, an internal alert is admissible if:

- it is based on a reasonable presumption that a breach of integrity has occurred, is occurring, or is highly likely to occur within a federal public-sector body

- it falls within the material and personal scope defined in Articles 2 to 5 of the Law of 8 December 2022.

According to Article 9, no later than fifteen working days after receiving the alert, the internal alert channel must inform the author of the alert in writing whether it is admissible, unless the author expressly requests otherwise or the internal alert channel has reasonable grounds to believe that acknowledging receipt would compromise protection of the author's identity. If the alert is inadmissible, the aforementioned communication will, where appropriate, be accompanied by relevant recommendations. The internal alert channel, which has been seized and is not competent, must, within a reasonable time and in a secure manner, forward the received alert to the competent internal alert channel if this can be determined based on the available information and will inform the author of the alert without delay. If the internal alert is admissible and one or more other internal alert channels are also competent, the information in the alert must be forwarded to them within a reasonable time and in a secure manner. In cases of repeated internal alerts that contain no significant new information

compared to a previously closed alert, the internal alert channel may decide to immediately close the alert procedure. The author will be informed in writing of this decision and the reasons for it.

3. *Digital tools to fight irregularities and fraud: the ARACHNE system in Belgium and detecting fraud in the social sector*

In recent years, Belgium has embarked on a process of administrative reform by integrating digital tools into public administration. This initiative seeks to reconcile the pursuit of administrative simplification with the preservation of citizens' privacy. The adopted model has a decentralised data management structure, with information shared among public bodies via interconnected networks. A central feature of this approach is the use of service integrators, such as the Crossroads Bank for Social Security, which facilitates data exchange while supporting the principle of single data collection (Degrave, 2020). This principle, now enshrined in legislation, ensures that personal information provided by a citizen to one authority cannot be requested again by another.

Within this framework, the OASIS (*Organisation Anti-fraude des Services d'Inspection Sociale*) tool was developed and has been operational since 2004. OASIS serves as a data warehouse, aggregating vast amounts of personal data, including tax records, social security details, and energy consumption statistics. The system utilises data matching and data-mining techniques to identify individuals suspected of welfare fraud. These methods facilitate profiling citizens and initiating inspections based on algorithmic assessments.

Despite its efficiency in fraud detection, OASIS has raised numerous constitutional and legal concerns. The legislative basis for the tool was introduced belatedly in 2018 and in vague terms, failing to provide a transparent and specific regulatory framework. The opacity surrounding the data collected, the purposes of processing, the functioning of the algorithms, and the lack of publicly available information all contribute to a climate of uncertainty. Furthermore, individuals subject to profiling are not adequately informed, nor are they given sufficient legal safeguards.

This situation gives rise to potential infringements of fundamental rights, particularly the right to privacy as guaranteed under Article 8 of the European Convention on Human Rights and Article 22 of the Belgian Constitution. The use of automated profiling and the lack of human oversight may also contravene Article 22 of the General Data Protection Regulation,

which limits fully automated decision-making. In addition, the secrecy of the algorithms prevents any meaningful scrutiny of potential discriminatory outcomes, raising concerns about equality and non-discrimination.

The Belgian experience with OASIS illustrates a broader tension between administrative modernisation and respect for the rule of law. While digital tools may enhance efficiency, their deployment must be governed by clear legal norms, transparent processes, and effective safeguards to protect citizens' rights. Without these, public confidence in digital administration is likely to erode, undermining both legitimacy and long-term effectiveness.

Against this background, the formal introduction of the ARACHNE risk-scoring and data-mining tool in 2023 represents a further development in Belgium's integration of digital technologies within public sector oversight (European Commission, 2024). Unlike OASIS, ARACHNE is a tool developed by the European Commission to assist managing authorities in fulfilling their responsibilities under the Financial Regulation, particularly regarding the sound financial management of European Union funds. Specifically, the Brussels-Capital Region, Wallonia, and Flanders have incorporated ARACHNE into their operational frameworks for managing the European Regional Development Fund (ERDF), the Recovery and Resilience Facility (RRF), and the European Social Fund (ESF). This strategic deployment aligns with the European Union's overarching objective of enhancing sound financial management and reinforcing the protection of the Union's financial interests.

The adoption of ARACHNE by the Belgian regional authorities represents a significant step forward in strengthening risk control, transparency, and accountability mechanisms for managing EU funds. This tool helps identify and mitigate key financial and operational risks, including – but not limited to – double funding across EU instruments, potential conflicts of interest, and signs of irregularities or fraudulent behaviour. By systematically utilising data analytics and risk scoring, ARACHNE enables managing authorities to take a more proactive and informed approach to project assessment, selection, and monitoring.

A concrete example of this enhanced control framework can be observed within the ESF programme in Flanders. Under this programme, the evaluation of a project proposal may be initiated after the submission of a sworn declaration by the applicant entity. This procedural requirement reinforces the principles of due diligence, transparency, and legal accountability in project appraisal and decision-making, ensuring that declarations of integrity and compliance precede the allocation of public funds.

It is also important to emphasise that ARACHNE is a tool developed by the European Commission, intended to support Member States in fulfilling their obligations under the principles of sound financial management as set out in the Financial Regulation. Its use, while currently voluntary, is encouraged by the Commission as a good administrative practice, and it has been progressively adopted by a growing number of Member States (a more detailed discussion of ARACHNE's implementation – particularly in the Italian context – is provided in the section of this deliverable dedicated to digital tools and innovative practices in national fund management).

Part B: Issues of Criminal Law

4. *Implementation of the PIF Directive (EU) 2017/1371 into the Belgian law*

To comply with the PIF Directive, the Belgian legislator needed to amend its national legislation, as the existing laws did not fully align with the Directive's requirements. This transposition was finalised only after the official implementation deadline had passed. The Belgian legislator implemented the PIF Directive through two main acts:

- Act of 9 December 2019 modifying the General Law on Customs and Excise of 18 July 1977 and the VAT Code (Le loi modifiant la loi générale sur les douanes et accises du 18 juillet 1977 et le code de la taxe sur la valeur ajoutée transposant la directive (EU) 2017/1371, Moniteur belge 18 December 2019),
- Act of 17 February 2021 containing various provisions on justice (Le loi portant des dispositions diverses en matière de justice, Moniteur belge 24 February 2021).

In the area of customs and excise duties, the legislative changes concerned the following aspects.

A distinction was introduced in Belgian law based on whether the tax fraud was committed intentionally, specifically for offences that fall within the material scope of the PIF Directive. In addition, the amended legal framework provides for imprisonment as a penalty for all such offences. Where the fraud results in serious harm to the financial interests of the European Union-presumed when the damage exceeds EUR 100,000 - a maximum penalty of

at least four years of imprisonment is foreseen, aligning with the requirements of the Directive. Furthermore, in certain cases, the attempt to commit offences covered by the PIF Directive has also been criminalised. Thus, the new legislation clarified and expanded the offences and introduced higher penalties.

Additionally, the law aimed to align the VAT Code with the requirements of the PIF Directive. It made clarifications that VAT tax fraud linked to the territory of at least two Member States and causing a damage of at least EUR 10.000.000 constitutes serious tax fraud and is thus punishable with a maximum penalty of five years of imprisonment. Based on the Articles 5 and 8 of the PIF Directive, the legislator introduced a new provision criminalising the attempt to commit this type of serious tax fraud as well as an aggravating circumstance when this type of serious tax fraud is committed by a criminal organisation (Careel and de Smedt, 2022).

Furthermore, in Belgium, the maximum penalties for active private and public corruption and passive corruption have been significantly increased. All have been increased to at least 4 years and some to 5 years.

Overall, research indicates that Belgian national legislation has, for the most part, complied with the requirements of the PIF Directive. In Belgium, the Directive has served as a catalyst for legislative reforms, prompting the legislator to introduce various legal amendments (Van Den Berge, 2021).

However, there are certain indications that Belgian law is not fully in compliance with the PIF Directive. Article 5(2) of the Directive mandates that Member States must make the attempt to commit any of the criminal offences listed in Articles 3 and 4(3) punishable as a criminal offence. When examining the provisions of Belgian law, such as Article 491 of the Criminal Code on embezzlement, and Article 492bis of the Criminal Code on misuse of company assets, it becomes evident that attempts to commit these offences are not criminalised. This is despite the fact that these offences, when they concern the EU's financial interests, could fall under Article 3 of the PIF Directive.

Additionally, Belgian law currently requires a victim's complaint or a report from the foreign country for prosecuting a Belgian national who commits a crime abroad against a foreign national (see the Preliminary Title of the Belgian Code of Criminal Procedure). However, the PIF Directive, which aims to protect the EU's financial interests, mandates that crimes affecting the EU's financial interests must be prosecuted without the need for a report or

denunciation (Careel and de Smedt 2022). Article 11(4) of the Directive clearly states that "Member States shall take the necessary measures to ensure that the exercise of their jurisdiction is not subject to the condition that a prosecution can be initiated only following a report made by the victim in the place where the criminal offence was committed, or a denunciation from the State of the place where the criminal offence was committed".

Therefore, it is suggested that the Belgian law does not fully comply with the provisions of the PIF Directive.

5. *The EPPO's establishment and operation in Belgium*

Belgium aimed to balance the practical integration of the EPPO into its criminal justice system with its obligations under the Regulation. By relying on the margin of appreciation allowed by the Regulation, particularly the recognition of national procedural diversity in Recital 15, Belgium sought to avoid a substantial reform of its criminal procedure, especially given the tight deadlines imposed for implementing the EPPO Regulation (Hauck, Schneider, 2024).

To align its national legislation with Council Regulation (EU) 2017/1939 of 12 October 2017 concerning the establishment of the European Public Prosecutor's Office, Belgium implemented changes through the Law of 5 May 2019, the Law of 17 February 2021, and the Royal Decree of 18 April 2021. These measures resulted in amendments to the Judicial Code, the Code of Criminal Procedure, the Law of 15 June 1935 on the use of languages in judicial matters, as well as relevant customs legislation (Notification of the Kingdom of Belgium in relation to art. 117 of the EPPO Regulation).

The Belgian legislator created an autonomous, separate public prosecutor's office for the Belgian European Prosecutor and the European Delegated Prosecutors, instead of integrating them into the existing public prosecutor's offices, such as the Federal Prosecutor's Office (Claes et al., 2021).

Some researchers expressed their views that the operation of an isolated, stand-alone structure hinders the integration of the European Delegated Prosecutors into the national system (Weyembergh, Brière, 2021) and would not facilitate smoother cooperation with existing national authorities. Instead, this approach could risk creating tensions, such as with

regards to the allocation of budgets, the availability of specialised police investigators, and access to essential technical resources (Franssen et al., 2021).

Further research supports these concerns and emphasises the practical challenges associated with Belgian current approach. While the idea of establishing a dedicated and independent office for the prosecution of PIF offences may seem promising in theory, its implementation suggests potential practical shortcomings. Operating with only some EDPs, who are responsible for handling cases across the entire national territory, presents significant operational challenges. The limited number of prosecutors, combined with their extensive duties, places a heavy burden on the office and risks undermining its overall efficiency. This setup may also lead to a sense of isolation among EDPs, ultimately hindering their ability to achieve the intended impact within the Belgian judicial system (Hauck, Schneider, 2024).

In Belgium, criminal investigations are always directed by a judicial authority: either the public prosecutor or the investigating judge. The preliminary investigation is conducted by a (federal) public prosecutor, while the judicial investigation is led by an investigating judge (Pradel, 2019).

The European Public Prosecutor's Office operates under a prosecutorial model, meaning there is no role for an investigating judge — similar to the system in most EU Member States. However, as research highlights, neither the EPPO Regulation nor its general philosophy explicitly forbids the involvement of an investigating judge (Claes et al., 2021). A good example is Article 28(1) which states that "The European Delegated Prosecutor handling a case may, in accordance with this Regulation and with national law, either undertake the investigation measures and other measures on his/her own or instruct the competent authorities in his/her Member State. Those authorities shall, in accordance with national law, ensure that all instructions are followed and undertake the measures assigned to them". The article refers to the power of European Delegated Prosecutor to conduct and lead investigations but the wording of the article does not suggest that all EPPO investigations be conducted solely by the EDP.

Still, as the present working paper will further highlight, the involvement of an investigating judge raises doubts about the actual compliance of Belgian law with certain provisions of the Regulation.

As already mentioned, the Belgian legislator has decided to introduce rather limited changes when it comes to adapting its national system to the EPPO Regulation and maintained

the judicial inquiry procedure for EPPO cases. Article 79 of the Judicial Code stipulates the designation of specialised investigating judges for this purpose. The selected judges are expected to have necessary experience in investigating offences falling within the EPPO's competence. This designation has no impact on their status or their position. However, these investigating judges must give priority to cases referred to them by an EDP or by the European Prosecutor, should the EP decide to conduct the investigation personally.

As of 31 December 2024, in Belgium there are 4 European Delegated Prosecutors and 7 National European Delegated Prosecutors Assistants (EPPO Annual report, 2024). According to Yves Van Den Berge, the head of the Belgian office of the European Public Prosecutor's Office, the section requires six additional delegated prosecutors on top of the four currently in post. This need is attributed to the complexity of cases in Belgium, particularly due to the presence of European institutions and the prevalence of VAT and customs fraud (BX1, 2025).

According to the 2024 Rule of Law Report regarding the situation in Belgium, overall, there is a good cooperation with the European Public Prosecutor's Office. The report however highlights some issues concerning the reporting of cases- in some instances, confusion over the EPPO's competences influences immediate reporting to the EPPO and the cases get reported to the "regular" prosecution (European Commission, 2024).

6. *Compliance issues in Belgium with regard to the EPPO Regulation*

Research highlights several issues that raise concerns about the full compliance of Belgian law with the EPPO Regulation.

6.1. Autonomy and functions of EPPO

One key issue that might affect the compliance of Belgian law with the provisions of EPPO Regulation is the continued involvement of investigating judges (or in some cases other administrative authorities) in EPPO cases. While, as discussed, this role as such is not explicitly prohibited by the Regulation, it however may undermine the independence and prosecutorial model that the Regulation seeks to establish. Although the EPPO Regulation emphasises the autonomy of European Delegated Prosecutors in conducting investigations, the Belgian legal system still mandates that certain investigations be led by an investigating judge. In particular, investigations into PIF offences involving intrusive investigative measures, as outlined in

Articles 55 and 56 of the Belgian Criminal Procedural Code, must be conducted by an investigating judge rather than by EDPs or the European Prosecutor.

In such situations, the investigative judge is acting independently in order to collect exculpatory and incriminatory evidence, while the EDPs/EP are excluded from the procedure and receive the criminal file only once the investigation has been completed. The EDPs/EP may request additional investigative measures to be conducted but the investigative judge still has power to conduct the investigation (Ypma at al., 2023).

Furthermore, the powers of the Belgian customs authorities are preserved with regard to the investigation and prosecution of customs-related PIF offences. According to the law, the Administrator General of the customs administration will appoint at least one official, after consultation with the Belgian European Prosecutor, who is responsible for the cooperation with the Belgian EDPs when the EPPO exercises its competence regarding customs offences.

The designated customs official operates independently from their administration, though still part of it, and follows only the EPPO's instructions. As such, the customs administration cannot oppose actions taken by the official when carrying out EPPO decisions. The official exercises powers of investigation and prosecution and has the authority to initiate legal proceedings in EPPO-competent customs cases. While the customs administration retains a role in investigations and bringing cases to trial, the EPPO ultimately acts through the designated customs official (Claes, Franssen, 2021). Therefore, there is a high likelihood that the designated customs official will actually remain in charge of the investigations.

The highlighted examples showcase the limited autonomy of the EDPs and create a conflict with the core principle of prosecutorial independence that is central to the EPPO framework. This system further calls into question the compliance of the Belgian legislative framework with Article 4 of the Regulation, which grants the EPPO the responsibility and necessary prerogatives to investigate, prosecute, and bring to judgment any PIF offences, as well as with Article 5, which sets out the basic principles governing the EPPO's functioning.

6.2. Exercise of competences

In examining the allocation and exercise of competences under the EPPO Regulation, it appears that Belgian law does not comply with **Article 24** (1) of the **EPPO Regulation**. In Belgium, it is the national prosecutor's office that should report the case to the EPPO, which

means that the national authorities should submit the report to them rather than directly to the EPPO. For example, Article 156/1(3) of the Judicial Code provides that the public prosecutor, general prosecutor, or federal prosecutor should inform the EDP. This additional step increases the risk of cases being misclassified if the national authority incorrectly decides the case does not fall within the EPPO's competence. It also introduces the risk of **undue delays**, which contradicts the Regulation's requirement for **timely and direct reporting** to the EPPO. Direct reporting would allow the EPPO to make an independent determination and streamline the process.

Moreover, Belgium seems to be not in compliance with Article 25(6) of the EPPO Regulation because it designated a higher national prosecutorial body to resolve conflicts of competence with the EPPO. Such bodies are not considered "courts or tribunals" under EU law and therefore cannot refer questions to the CJEU, as required by the Regulation (Engelhart, 2024).

6.3. Procedural misalignments

Additional incompliances of the Belgian law become evident when examining its procedural rules.

A good example is **Article 33(1) of the EPPO Regulation**, which grants the **handling EDP** the authority to order or request the arrest or pre-trial detention of a suspect, in accordance with national law. However, under **Belgian national law**, such measures require a "judicial inquiry," which places them under the exclusive control of the **investigative judge.** As a result, **EDPs/EPs** are unable to directly request or order these measures. This represents a significant limitation, as the **EPPO's** investigative powers are undermined by the fact that critical actions, such as arrest or pre-trial detention, are entirely within the control of the **investigative judge**. This further complicates the **EPPO's** operational independence (Engelhart, 2024).

National law also appears to be non-compliant with Article 39(1) of the Regulation because it grants a national authority the power to make the final decision on dismissing a case. In Belgium, the public prosecutor enjoys extensive discretion to dismiss national cases under Article 28(4) of the Criminal Procedural Code, and this discretion is not confined to the grounds established by the Regulation. When an EPPO case overlaps with a national case, dismissal is only allowed following consultation with the pertinent public

prosecutor, and in situations involving a judicial investigation, only after a pre-trial tribunal or court has intervened (Ypma at al., 2023).

7. *Conclusions*

Belgium has introduced legislative changes to align its national legal framework with the requirements of Directive (EU) 2017/1371 on the protection of the Union's financial interests and the EPPO Regulation.

Nevertheless, research points to some areas of non-compliance. Specifically, Belgian law does not criminalise attempts for certain offences (e.g., embezzlement and misuse of company assets) that fall within the material scope of the PIF Directive. In addition, the requirement for a victim's complaint or a foreign report to prosecute cross-border PIF crimes is not in line with Article 11(4) of the Directive, which demands unconditional jurisdiction for such offences.

Despite Belgium's efforts to align its legal framework with the EPPO Regulation, research indicates that certain aspects of national law may still fall short of full compliance. In particular, Belgian law appears to be not compliant with several provisions concerning the basic principles of the EPPO's activities and the execution of its core tasks and competences.

The continued reliance on investigating judges for leading inquiries, even in cases under the EPPO's jurisdiction, limits the operational independence of European Delegated Prosecutors. Procedural constraints, such as the inability of EDPs to independently request pre-trial detention or arrests, and indirect reporting channels that filter cases through national prosecutors, further might weaken the EPPO's effectiveness.

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V. Spain

Part A: Issues of Administrative Law

1. *Introduction*

According to the 25th Additional Provision of Law 38/2003 of 17 November 2003 on General Subsidies, the National Anti-Fraud Coordination Service, formally integrated in the General Intervention of the State Administration (*Intervención General de la Administración del Estado*), has the function of coordinating actions aimed at protecting the financial interests of the European Union against fraud, with the objective of complying with the mandates contained in article 325 of the Treaty on the Functioning of the European Union and article 3.4 of Regulation No. 883/2013 of the European Parliament and of the Council, concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 concerning investigations conducted by the European Anti-Fraud Office.

At the organisational level, although the SNCA is formally attached to the IGAE, it exercises its powers with full independence, for which it must have sufficient resources to meet the demands and requirements established by OLAF. In this regard, Spanish legislation, specifically Royal Decree 91/2019 of 1 March, which regulates the composition and functioning of the Advisory Council for Preventing and Combating Fraud against the European Union's financial interests (*Real Decreto 91/2019, de 1 de marzo, por el que se regula la composición y funcionamiento del Consejo Asesor de Prevención y Lucha contra el Fraude a los intereses financieros de la Unión Europea*), establishes the necessity to designate an "Advisory Council" that will act as an advisory body to help the SNCA. This Council will be chaired by the Comptroller General of the State Administration and will be made up of representatives of the ministries, agencies, and other national institutions with responsibilities in the management, control, prevention, and fight against fraud in relation to the European Union's financial interests.

More specifically, in Spain, the National Anti-Fraud Coordination Service has the authority to direct the creation and implementation of national strategies and to promote the

legislative and administrative changes necessary to protect the financial interests of the European Union, identify the possible deficiencies existing at the national level in the management of European Union funds, establish channels for coordination and information on irregularities and suspected fraud between the different national institutions and OLAF, and promote training activities to create a culture of prevention and combat fraud.

With specific regard to the coordination of the detection and management of irregularities or fraud affecting the financial interests of the European Union, all public authorities at the State, regional and local levels, as well as the heads or directors of public offices, agencies and other public bodies and those who, in general, exercise public functions or carry out their work in these entities, must actively collaborate with and support the SNCA.

In summary, although the Spanish SNCA is not currently carrying out its activities intensively, it has broad competencies in the area of internal coordination and cooperation with other public entities at all levels of government, according to the provisions of the Spanish legal system. It will also be the body responsible for cooperating with OLAF in the reporting and investigation of fraud affecting the EU's financial interests. Lastly, this entity can also out its own detection and investigation to verify the existence of any irregularities in the management of European funds. In order to fulfil its purposes, the SNCA has the same powers as OLAF to access relevant information concerning the facts under investigation.

On 24 February 2022, the National Anti-Fraud Coordination Service approved the Guide for the application of anti-fraud measures in the implementation of the Spanish Recovery, Transformation and Resilience Plan (https://www.pap.hacienda.gob.es/sitios/pap/esES/Documents/20220224GuiaMedidasAntifraude.pdf).

This guide includes a recommendation, addressed to the entities involved in the implementation of the Recovery Plan, to communicate to the National Anti-Fraud Coordination Service the initiation of all judicial or administrative sanctioning procedures affecting any expenditures financed with MRR funds, as well as any change in the status of a previously notified case, such as its closure, dismissal, or the adoption of any other type of administrative or judicial decision.

It is recommended that communication to the SNCA be submitted within one calendar month from the date on which the decision-making or executing entity refers the actions that constitute evidence of fraud, corruption, or any other illegal activity to the appropriate authority

to initiate the necessary judicial or administrative proceedings to determine whether the alleged infringement occurred.

2. *The overall anti-fraud strategy for the implementation of the Recovery, Transformation, and Resilience Plan*

In Spain, the SNCA is responsible for collaborating on the preparation and promotion of the national anti-fraud strategy. The main objective of this strategy is to guarantee the establishment of effective procedures to design a system for combating fraud, corruption, and other illegal activities. In this regard, the fifth additional provision of Law 2/2023 of 20 February, regulating the protection of persons who report regulatory infringements and the fight against corruption, requires the Government to approve an anti-corruption strategy within eighteen months from the entry into force of the aforementioned law and in collaboration with the Autonomous Communities. This instrument should include an evaluation of compliance with the objectives established in the regulations on whistleblower protection, as well as the measures deemed necessary to remedy the deficiencies identified during this period.

Although the last deadline for approving the National Anti-Fraud Strategy expired in September 2024, Spain still does not have one. The seriousness of this situation was highlighted in the latest European Parliament Resolution of 18 January 2024 on the protection of the European Union's financial interests – Fight against fraud: annual report 2022 110, where the European institutions noted with concern that, at the end of 2022, three Member States still indicated that they had not adopted any strategy to protect the Union's financial interests, and five Member States (Belgium, Spain, Luxembourg, the Netherlands, and Romania) indicated that they were in the process of creating one. This resolution urged Member States to immediately adopt a National Anti-Fraud Strategy to demonstrate their commitment to the protection of EU funds.

The design of a national anti-fraud strategy is a key element to ensure the effectiveness of all public policies adopted in the area of prevention, detection, and sanctioning of fraud and irregularities, as well as the recovery of funds. In addition, the strategy and subsequent action plan will bring more coherence to the measures taken in the fight against fraud, not only at national level but also at the regional and local levels.

Although Spain has not yet approved the National Anti-Fraud Strategy, it is necessary to take into account the approval of Order HFP/1030/2021 of 29 September, which establishes the management system of the Recovery, Transformation, and Resilience Plan.

In particular, Article 6.1 establishes, with the underlying objective of strengthening the mechanisms for the prevention, detection, and correction of fraud, corruption, and conflicts of interest, that any entity, decision maker, or executor involved in the implementation of the PRTR measures must have an 'Anti-Fraud Action Plan.' This plan enables them to ensure and declare that, in their respective areas of responsibility, the corresponding funds have been used in accordance with the applicable rules, particularly concerning the prevention, detection, and correction of fraud, corruption, and conflicts of interest.

The overall objective to be achieved with the approval of the anti-fraud plans is to systematise a methodology to ensure that European funds are used within the parameters of legality set out in the applicable national and European regulations. This, in turn, will enable progress to be made in complying with obligations regarding the prevention, detection, correction, and prosecution of fraud, corruption, conflicts of interest and double financing, thus fulfilling the principle of sound financial management on which the Recovery and Resilience Mechanism (hereinafter 'MRR') is based.

Particularly relevant is the report of the Spanish Court of Audit (https://www.tcu.es/repositorio/45c8172c-93ea-4380-a63f-4804e0e8ac09/NR_I1545.pdf), which examined the anti-fraud plans of seventy-five State public sector bodies and entities, all of them approved before 31 May 2022. More specifically, of the seventy-five entities analysed, only sixty-four had an anti-fraud plan at the date of the audit, and the remaining eleven entities were in an advanced process of implementation.

The report shows that 66% of the audited anti-fraud plans provide anti-fraud measures only in relation to the management of PRTR funds. On the other hand, the possibility of using the same control mechanisms for the entire activity of the organisations is not envisaged. This can undoubtedly reduce the confidence of citizens and operators who deal with administrations, as they observe that public entities are not willing to adopt a transversal and global anti-fraud policy, but only implement it in those areas where it is mandatory in accordance with European Union provisions.

Lastly, the Court of Auditors, in the conclusions formulated in the report, highlights some of the weaknesses in the configuration of the current anti-fraud system in Spain.

Specifically, the Court states that, in order to guarantee the effectiveness of the measures envisaged in the various anti-fraud plans approved, it is necessary to have a common framework and, in particular, a National Anti-Fraud Strategy. On the one hand, the approval of such a strategy would enable, the extension of anti-fraud measures to all funds regardless of their origin and, on the other, the adherence of anti-fraud plans to global integrity guidelines or policies with a view to permanence.

3. *Money laundering controls applicable to the management of the NRRP*

In the Spanish legal system, the rules on money laundering are laid down in Law 10/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing. For its part, Article 428 of the Criminal Code criminalises trading in influence as a criminal offence. In particular, it establishes sanctions for all those officials who, using their position within the organisation, exert undue influence to obtain economic benefits. The penalties for committing this offence include from six months to two years' imprisonment, fines, and a special prohibition to hold any public office or position for a period of time between five and nine years.

As a general rule, the anti-fraud plans approved by the various Spanish authorities at State level make no express reference to the need to implement money laundering measures, either in managing European or internal funds.

The only reference that could be found is contained in the rules or ethical guidelines for action in the Plan of Anti-Fraud Measures for the Management of Next Generation Funds approved by the Ministry of Social Rights and Agenda 2030 (https://www.fondoseuropeos.hacienda.gob.es/sitios/dgpmrr/es-es/Documents/Plan%20de%20Medidas%20Antifraude%20para%20la%20Gestión%20de%20los%20Fondos%20Next%20Generation%20EU%20_%20MDSAG2030.pdf).

Specifically, in the section on the ethical rules that must underpin the execution of actions related to the MRR, it is established that employees of the Ministry must ensure compliance with the legality of all administrative procedures carried out in the execution of the programmes within its sphere of competence. Furthermore, it undertakes to alert immediately when it detects illegal behaviour linked to money laundering, the financing of criminal organisations, extortion, or any other fraudulent activity, as well as any situation of sexual

exploitation, abuse, sexual harassment, inhuman or degrading treatment, or modern forms of slavery. In particular, it is the responsibility of the directors to ensure they possess the necessary knowledge to comply with these ethical standards and to assist and advise the rest of the team members to facilitate compliance with this obligation.

4. *Conflict of interest controls*

In Spain, conflicts of interest in the field of General State Administration are regulated by Law 5/2006 of 10 April, on the Regulation of Conflicts of Interest for Members of the Government and Senior Officials of the General State Administration. Furthermore, the aforementioned law must be complemented with the provisions of Article 23 of Law 40/2015 of 1 October on the Legal Regime of the Public Sector. This provision, applicable to all public administrations and entities, regulates the cases in which public authorities and employees must abstain from intervening in procedures because of something that prevents them from acting and deciding with objectivity and neutrality. In these cases, they must inform their hierarchical superior, who will decide whether or not to grant the abstention from intervening in the procedure, as deemed appropriate. More specifically, one of the causes for abstention regulated in Law 40/2015 of 1 October on the Legal Regime of the Public Sector, is the existence of a conflict of interest.

With specific regard to European funds, and specifically the Next Generation EU funds, it is necessary to take into account the provisions of Order 1030/2021 of 29 September, which establishes the management system of the Recovery, Transformation, and Resilience Plan. This order imposes the obligation on the managing bodies of these funds to complete a declaration of absence of conflict of interest, also known as the DACI. This obligation extends to all those involved in the management procedures of the PRTR – both decision-makers and executors.

However, this provision must be interpreted in accordance with Commission Communication 221/C121/01 on guidance for avoiding and managing conflict of interest situations under the Financial Regulation, which states that “the involvement has to be reasonably significant: the person must be entitled to exercise a degree of discretion or control over the implementation of the budget (i.e. the power to act or give instructions to those who act; or a role in advising or providing opinions to those who act)”. Therefore, not all persons involved in the procedures for the management of European funds may be affected by a

conflict-of-interest situation, only those whose actions meet any of the properties or characteristics outlined above.

More recently, Order HFP/55/2023, dated January 24, regarding the systematic analysis of the risk of conflict of interest in the procedures implementing the Recovery, Transformation, and Resilience Plan, was approved. Also, a few months later, to facilitate its implementation and application, the Practical Guide for the Application of Order HFP/55/2023, dated January 24, on the systematic analysis of the risk of conflict of interest in the procedures executing the Recovery, Transformation, and Resilience Plan of the Ministry of Finance and Public Administration was published.

In Article 3 of the aforementioned order, the obligation is established to carry out a systematic and automated analysis of the risks of a conflict of interest affecting any individuals considered to be the decision-makers in the operation in all procedures. This examination will apply, in public procurement, to the single-person contracting body, to the members of the collegiate contracting body, and the members of the collegiate body assisting the contracting body who participate in the contracting procedures during the phases of evaluation of tenders, proposal for award, and award of the contract. Concerning subventions, this control will be applied to the body responsible for awarding public aid and the members of the collegiate bodies assessing applications during the phases of application assessment and award decision-making.

Lastly, it should be noted that this order also expressly imposes the obligation to carry out this conflict-of-interest risk analysis on employees participating in the procedures for awarding contracts or grants, within the framework of any PRTR action, regardless of whether they are part of an executing or decision-making body.

5. *Anti-corruption and transparency safeguards*

The complexity of the Spanish legal system requires taking into account not only the anti-corruption rules established at the national level, but also all the regulations adopted by the Autonomous Communities that apply to this specific sector.

In this respect, it should be noted that, at the national level, the legislator has not undertaken the complex task of defining a comprehensive regulatory framework that provides a structured approach and clear operating rules to prevent irregularities or fraud in the management of public funds. Despite these shortcomings, it is possible to find specific

provisions in sectoral regulations, particularly in the laws governing public contracts, subsidies, and the protection of whistleblowers.

Firstly, Article 64 of Law 9/2017 of 8 November on Public Sector Contracts, which transposes the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU of 26 February 2014 into Spanish law, states that contracting authorities must take appropriate measures to combat fraud, favouritism, and corruption, and to effectively prevent, detect, and resolve conflicts of interest that may arise in tendering procedures. The aim is to avoid any distortion of competition and to ensure transparency and equal treatment in all procurement procedures.

This provision reinforces the obligation to verify that there is no conflict of interest among the bodies responsible for resolving contracting procedures that could affect the outcome of the adjudication. So, in these cases, it is essential to verify that none of the persons involved has a direct or indirect financial, economic, or personal interest that could compromise their impartiality and independence in the context of the procedure.

Secondly, Article 7 of Law 38/2003 on General Subsidies of 17 November 2003 regulates the regime applicable to the financial responsibility arising from the management of funds from the European Union. In this respect, it establishes that public administrations or their bodies and entities – which, in accordance with their respective competences, carry out management and control actions for public aid financed by European Union funds – must assume the responsibilities arising from these actions. In particular, they are responsible for carrying out the clearance of accounts and applying the rules on budgetary discipline.

In cases where any irregularity or fraud is detected in the management of European funds, the bodies of the General State Administration, as well as other dependent or related entities competent to coordinate each of the European funds or instruments, or those responsible for proposing or coordinating the payments of aid from each fund or instrument, must initiate and resolve a procedure to determine whether it is necessary to establish the corresponding financial liabilities.

Lastly, if a decision is issued stating that the amounts obtained from any of the European Union’s financial instruments need to be returned, an initial request will be made for the entity concerned to voluntarily repay the funds. In the absence of voluntary payment, the compensation or withholdings to be made as a consequence will be carried out by deducting the amounts due from future payments made with the allotted funds and financial instruments

of the European Union in accordance with the respective nature of each, and with the amounts to be paid by the State to other administrations or entities responsible for any item, whether budgetary or non-budgetary, provided that they are not resources of the financing system.

In contrast to the above, some Autonomous Communities have developed their own legislation on integrity, ethics, and corruption prevention, the scope of which generally extends to regional and local administrations. Specifically, to date, the following laws have been approved (listed in chronological order of approval): Law 14/2008, of 5 November, on the Anti-Fraud Office of Catalonia; Law 11/2016, of 28 November, on the Agency for the Prevention and Fight against Fraud and Corruption of the Valencian Community; Law 5/2017, of 1 June, on Public Integrity and Ethics (Aragón); Law 7/2018 of 17 May on the creation of the Office of Good Practices and Anti-Corruption of the Comunidad Foral de Navarra; Law 8/2018 of 14 September on Transparency, Good Governance and Interest Groups; Law 2/2021 of 18 June on the fight against fraud and corruption in Andalusia and the protection of whistleblowers.

The Autonomous Communities not mentioned in the previous paragraph have chosen not to establish a specific regulatory framework to prevent corruption in their organisations. However, in their sectoral regulations, especially when regulating their respective external control bodies, they do introduce some isolated provisions on the prevention and detection of irregularities and financial fraud.

6. *The Spanish regime on whistleblower protection law*

As mentioned above, Spain does not yet have a national strategy for the prevention and prosecution of fraud and corruption. The only recent progress that has been made in this area derives from the approval and implementation of Law 2/2023, of 20 February, regulating the protection of persons who report regulatory infringements and the fight against corruption. The purpose of this law is to strengthen the information culture and integrity infrastructures of organisations as a mechanism for preventing and detecting threats to the public interest while, at the same time, providing protection to persons who report regulatory breaches committed at the national level, or other breaches that may affect the financial interests of the European Union.

The transposition of European regulations on the protection of whistleblowers in Spain is enabled by Law 2/2023 of 20 February regulating the protection of persons who report

regulatory infringements and the fight against corruption, establishing the obligation to designate an Independent Authority for the Protection of Whistleblowers. The designation of this authority allows all natural persons who have become aware of any actions or omissions within the scope of this law to file a complaint with this authority.

In this connection, it must be pointed out that the Spanish legislator has chosen to extend the objective scope of application of the above-mentioned rule since the protection afforded by this law will not only apply to natural persons who report on actions or omissions that may constitute infringements of European Union law (as laid down in the Directive (EU) 2019/1937 on the protection of persons reporting infringements of EU law), but this same protection regime also extends to persons reporting actions or omissions that may constitute a serious or very serious criminal or administrative offence under national law. In any case, all criminal or administrative offences involving economic damage to the public treasury and social security are understood to be protected by this law.

Spain's particular territorial and jurisdictional structure has led to the existence of not only an Independent Authority for the Protection of Whistleblowers designated on the national level but also recognises the possibility for the Autonomous Communities to set up their own autonomous body. Without prejudice to the above, Article 51 of Law 2/2023 of 20 February recognises the possibility of the holder of the presidency of the Independent Authority for the Protection of Whistleblowers drawing up circulars and recommendations to establish the criteria and appropriate practices for the correct functioning of the Authority. These circulars will be approved in accordance with the procedure established for the drafting of general provisions and will be binding once they are published in the Official State Gazette.

With regard to the National Independent Authority for the Protection of Whistleblowers, it should be noted that Spain clearly lags behind in the effective implementation of this European Directive. An example of this is reflected in the fact that, even though the State law transposing the Directive on whistleblower protection entered into force more than two years ago, the person who will assume the presidency of this Agency has still not been appointed. However, progress has been made in the approval of Royal Decree 1101/2024, of 29 October, which approves the Statute of the Independent Authority for the Protection of Whistleblowers, that A.A.I.

In particular, the national Independent Authority for the Protection of Whistleblowers will be competent to process, through the external channel, information that affects the General

State Administration and the entities that make up the State public sector; the rest of the public sector entities, constitutional bodies and bodies of constitutional relevance, and the entities that make up the private sector, when the infringement or breach reported affects or produces its effects in the territorial scope of more than one Autonomous Community. Lastly, when the corresponding agreement is signed with any of the Administrations of the Autonomous Communities, they will also be competent to resolve any procedures regarding information affecting that specific Autonomous Community Administration or any of its entities and its local public administrations.

Article 24.2 of Law 2/2023, on the other hand, provides that the Autonomous Communities may create their respective independent authorities, which will be competent with respect to information affecting the institutions of the Autonomous Community, the Autonomous Community public sector, and the local public sector in their respective territories. If they choose not to designate an authority of this type, they will have to sign an agreement with the State Independent Authority for the Protection of Whistleblowers so that the latter will assume the processing of information received that affects the Autonomous Community and their local administrations. The independent authority or entity that may be designated in each Autonomous Community will be competent with regard to information that affects the autonomous and local public sector of its respective territory, the autonomous institutions equivalent to the constitutional bodies at State level, and all private operators or companies when the breach reported is limited to the territorial jurisdiction of the corresponding Autonomous Community.

So far, the following independent administrative authorities have been set up: the Andalusian Anti-Fraud and Corruption Office (Andalusia); the Anti-Fraud Office of Catalonia (Catalonia); the Valencian Anti-Fraud Agency (Valencian Community); the Good Practices and Anti-Corruption Office of the Autonomous Community of Navarre (Navarre); the Galician Authority for the Protection of the Reporting Person (Galicia); the Community of Madrid has designated the Transparency and Data Protection Council as the Independent Authority for the Protection of the Reporting Person.

However, other Autonomous Communities have opted to attribute this function to bodies that are integrated within the internal organisational structure of the autonomous administration, although it is necessary in these cases to guarantee a special regime of functional independence. This has been the case, for example, in Castilla y León. In this

Autonomous Community, following the approval of Law 4/2024 of 9 May on Public Integrity, the Regional Council for Transparency and Good Governance was assigned the function of an Independent Authority for the Protection of Whistleblowers.

As for the Balearic Islands, following the repeal of Law 16/2016 and the extinction of the Office for the Prevention and Fight against Corruption, this administration is left without a specific authority for the protection of whistleblowers.

Lastly, Title III of Law 2/2023 specifically addresses the procedural processing phases of the complaints lodged with the external channel. Firstly, it details the procedure for receiving communications, which may be submitted anonymously or with the whistleblower's identity withheld, and may be made either in writing or orally. Secondly, the articles of the regulation deal with the admission procedure, establishing that after a preliminary analysis of the complaint, a decision will be taken on its admission or rejection.

Once the communication has been accepted for processing, the investigation phase begins and will culminate in the issuance of a report by the Independent Authority for the Protection of Whistleblowers. The Independent Whistleblower Protection Authority may decide to close the case, initiate disciplinary proceedings, or refer the facts to the Public Prosecutor's Office if it considers, after the investigation phase, that there are indications that the facts may constitute a criminal offence. When the information received affects the financial interests of the European Union, the facts will be brought to the attention of the EPPO.

7. *Anomaly indicators identified by Spain's COLAF*

As regards the identification of indicators to check for the existence of irregularities or fraud affecting the management of the European Union's financial interests, it is necessary to bear in mind Annex II of the Guide for the implementation of anti-fraud measures in the implementation of the Recovery, Transformation and Resilience Plan, drawn up by the National Anti-Fraud Coordination Service, prepared by the SNCA (https://www.igae.pap.hacienda.gob.es/sitios/igae/es-ES/CA-UACI/SNCA/Documents/Anexo%20II.%20Listado%20BR%20y%20controles.pdf).

Before drafting this Guide and its Annexes, the SNCA sent a questionnaire to more than thirty-five public authorities to identify, from an internal perspective, the risks that could arise from the management of both national and European public funds.

After this survey, the following fraudulent practices were identified as systemic risks (those originating within the organisation responsible for the management of funds): the existence of influence peddling, the possibility of discriminatory treatment in the selection of those awarded public contracts and subsidies, the lack of planning of administrative action and poor budgeting, the slowness and complexity of contracting procedures as factors that reduce competitive tendering, the existence of conflicts of interest, the use of criteria that prevent audits from being carried out to effectively control the results of the procedures, and the implementation of fees or invoices with cost overruns that reduce the efficiency of the management of public funds, among others.

Other risks of an operational nature, which affect the proper functioning of the organisations in charge of managing the funds, have also been identified. In particular, the existence of a clear lack of coordination between the different authorities in charge of supervising and sanctioning financial fraud, both at the administrative and criminal levels, was highlighted. Secondly, it was also highlighted that, in many cases, anti-fraud plans have not been approved, or in the cases where they do exist, they are inefficient, as there is no awareness or culture in public institutions of the effective fight against corruption. Thirdly, the lack of specialised professional profiles in anti-fraud and anti-corruption matters was also highlighted, which results in the incorrect management of conflicts of interest and the failure to detect irregularities and fraud affecting European and national funds at an early stage. Lastly, the ineffectiveness of whistleblowing channels, partly due to a lack of awareness of them and the inadequate protection of whistleblowers, were highlighted.

With regard to the specific elements to be used to measure the level of risk of committing an irregularity or fraud, it has been decided to set up a red flag system. The system envisages various controls, which function as alerts serving to detect these possible frauds early, before they can affect national and European financial interests.

In the area of subventions, the following elements must be verified:

- The existence of restrictions on competition
- The existence of discriminatory treatment in the selection of applicants
- The existence of conflicts of interest
- Non-compliance with State aid regulations
- The existence of deviation in the purpose of the subsidy
- The existence of prohibited double financing

- The existence of false documentation
- Failure to comply with information, communication, and publicity obligations
- The introduction of criteria or parameters that make it difficult to carry out audits

The following elements will be verified in the area of public procurement:

- The existence of restrictions on competition
- The existence of collusive practices in tenders
- The existence of conflicts of interest
- The introduction of manipulations in the technical or economic evaluation of the bids submitted
- The existence of fraudulent splitting of contracts
- The existence of non-compliance in the formalisation of contracts
- The existence of non-compliance or deficiencies in the execution of the contract
- The existence of prohibited double financing
- The existence of false documents
- Failure to comply with information, communication, and publicity obligations
- The introduction of criteria or parameters that make it difficult to carry out audits

8. *Can public authorities incur administratively liability? The Spanish system of liability for the management of EU funds*

In the Spanish legal system, all those responsible for managing public funds are subject to a complex regime of responsibilities, which will be applied concurrently. Thus, the conduct of public employees, in the most serious cases, may give rise to their criminal liability, if indications of the commission of a criminal offence are detected, which, in any case, will be investigated and sanctioned by the competent judicial authority. Furthermore, at the administrative level, an irregularity or fraud in the management of public funds may give rise

to accounting liability and disciplinary liability for employees providing services through any public administration or entity.

First of all, an approach to the accounting liability regime provided for in the Spanish legal system, at State level, means taking the following three laws into account: General Budgetary Law 47/2003 of 26 November, (LGP); Organic Law 2/1982 of 12 May on the Court of Auditors (LOTCU); Law 7/1988 of 5 April on the Functioning of the Court of Audit (LFTCU).

Pursuant to Article 176 of General Budgetary Law 47/2003 of 26 November 2003 (LGP), all authorities and other personnel providing services in any public sector entities which, through serious fraud or negligence, adopt resolutions or carry out acts in breach of the provisions of the budgetary regulations, are obliged to compensate the State Treasury or, where appropriate, the respective affected entity for any resulting damage and losses, regardless of any associated criminal or disciplinary liability. In addition, Article 38 of Organic Law 2/1982, of 12 May 1982, on the Court of Auditors (LOTCU), extends the subjective scope of application of accounting liability, since it establishes that any act or omission contrary to the law that causes damage to public funds or effects will be obliged to remedy damage caused.

In this regard, in accordance with Article 177 of the LGP, accounting liability will arise in cases of the misappropriation of public funds of an administration or public entity; when resources and other rights of the State Treasury are handled without complying with the provisions regulating their liquidation, collection, or entry into the public coffers, when expenditure is committed, obligations are settled and payments are ordered without sufficient credit to carry them out or in breach of the provisions of this law or of the applicable budget, when expenditure is allotted, obligations are settled, and payments are ordered without sufficient credit for them or in breach of the provisions of this law or the applicable Budget Law, all operations that give rise to refundable payments, failure to justify investments using public funds, or any operation executed fraudulently or with gross negligence that affects financial interests at the national or European level.

This catalogue of infringements must be completed with the provisions of Article 28 of Law 19/2013 of 9 December on transparency, access to public information, and good governance, which, in addition to classifying all the infringements indicated in the previous paragraph, includes other actions that constitute a very serious administrative infringement. These are not directly related to instances of fraud affecting the financial interests of the European Union but generally refer to breaches of Organic Law 2/2012 of 27 April on

Budgetary Stability and Financial Sustainability, such as the failure to adopt agreements on the non-availability of funds in the event of exceeding the public deficit and debt limits set at the European level, or the authorisation of payments that do not have the appropriate legal cover, etc.

If the act or decision was made with criminal intent, liability is determined by considering all the damage arising from the breach of this law. On the other hand, in cases of gross negligence, the authorities and other personnel of national public sector bodies will only be liable for damage that is a necessary consequence of the illegal act or decision. Additionally, the administration will need to take action against individuals in order to recover the amounts improperly received.

Under the conditions set out in the preceding articles, the obligation to compensate the State Treasury – or, where applicable, the respective entity – extends not only to those who adopt the resolution or carry out the act that gives rise to it, but also to auditors, in relation to the matters falling within the scope of their audit function, and to authorising officers who failed to record a written objection in the relevant file highlighting the inappropriateness or illegality of the act or resolution.

With regard to disciplinary liability, at State level, regulations concerning public employees must be adjusted firstly to the provisions of Title VII of Royal Legislative Decree 5/2015 of 30 October, which approves the revised text of Articles 93 to 98 of the Law on the Basic Statute of Public Employees, which provides a set of rules applicable to all public employees to be completed by other State and/or Autonomous Community laws.

Conversely, in areas not affected by the reservation of law (Article 103.3 EC), the disciplinary regime can be further developed through regulation. In this context, Royal Decree 33/1986 of 10 January 1986, which approves the Regulations on the Disciplinary Regime for Civil Servants in the State Administration (hereafter referred to as RRD), may be cited in specific situations.

It should also be borne in mind that, in the Spanish legal system, there is a different regulatory framework for the employees of autonomous administrations, since the Autonomous Communities are responsible for the content of the TREBEP and the legislation on local government in accordance with the provisions of their respective Statutes of Autonomy. Similarly, local public employees will also have their own special regime, taking

into account the provisions of the basic local regime regulations and the applicable Autonomous Community legislation.

In particular, Article 95.2 of the TREBEP and Article 29.1, sections c) and h) of Law 19/2013 of 9 December on transparency, access to public information, and good governance, classify two actions as very serious disciplinary offences. These actions enable the adoption of decisions or agreements that may affect the financial interests of the European Union and national resources, which may be subject to sanctions. Sections 95.2 d) and j) of the TREBEP stipulate that the adoption of manifestly illegal agreements that cause serious damage to the administration or to citizens, as well as the act of taking advantage of the status of a public employee to obtain an undue advantage for oneself or for another, constitute very serious offences.

Additionally, Article 29.2, sections b) and c) of Law 19/2013 of 9 December on transparency, access to public information, and good governance, classifies the following as serious infringements: intervention in an administrative procedure when any of the legally indicated causes for abstention are present, and the issuing of reports and the adoption of manifestly illegal agreements when they cause damage to the administration or to citizens and do not constitute a very serious infringement.

With regard to the sanctions that may be imposed in the event of any of the aforementioned very serious disciplinary offences, the provisions of Article 96 of Royal Legislative Decree 5/2015 of 30 October, which approves the revised text of the Law on the Basic Statute of Public Employees, must be taken into account. This provision states that, depending on the seriousness of the offence committed by the public employee, the following may be agreed upon in the most serious cases: dismissal from the civil service or disciplinary dismissal of employees, which will entail disqualification from holding a new employment contract with functions similar to those they performed; firm suspension from duties, or from employment and salary in the case of employees for up to six years; forced transfer, with or without changing place of residence, penalisation in terms of career, promotion or voluntary mobility, or else a mere warning.

Along the same lines, Article 30(4) of Law 19/2013 of 9 December on transparency, access to public information, and good governance, provides that public employees who commit a very serious offence under this law are to be dismissed, unless they have already been

removed from service. The prohibition also establishes a prohibition on or prevents their appointment to any senior or equivalent position for a period of between five and ten years.

9. *Digital tools and risk-oriented controls (especially concerning individuals and enterprises)*

Although Order HFP/1030/2021 of 29 September, which establishes the management system for the Recovery, Transformation, and Resilience Plan, refers to ARACHNE in Annex III.c when regulating fraud detection tools, no data on the extent of Arachne's use by the Spanish administrations is available. Everything suggests that its use is residual for the time being, as the Spanish administration's own system based on data mining – like ARACHNE but much more limited in terms of the risk situations it warns about – has finally been imposed since 2023.

Additional provision 112 of Law 31/2022 of 23 December on the General State Budget for 2023 imposes the obligation to carry out a systematic and automated analysis of the risk of conflict of interest and expressly provides for its development by order of the head of the Ministry of Finance and Public Administration. This regulatory provision has led to the approval of Order HFP/55/2023 of 24 January regarding the systematic analysis of the risk of conflict of interest in the procedures that implement the Recovery, Transformation and Resilience Plan, which regulates in detail the MINERVA system and its associated procedures. MINERVA is a data mining tool managed by the AEAT (*Agencia Estatal de la Administración Tributaria*), the use of which is imposed, with indefinite validity (DA 112 Law 31/2022), in contracting or subsidy procedures involving PRTR funds, provided that the call for applications has been published as of 26 January 2023 (2nd DF Orden HFP/55/2023).

MINERVA is an IT data mining tool developed by the AEAT available to all decision-making, executing, and instrumental entities participating in the Recovery, Transformation and Resilience Plan (PRTR), as well as to all entities at the service of public entities participating in the execution of the PRTR and the competent control bodies of the Recovery and Resilience Mechanism so that they can carry out conflict of interest risk analysis. https://sede.agenciatributaria.gob.es/static_files/Sede/Procedimiento_ayuda/ZA25/MINERVA_Manual_Usuario.pdf

MINERVA serves to analyse "possible family relationships or direct or indirect corporate links in which there may be a personal or economic interest that could lead to a

conflict of interest" between the interested persons participating in administrative procedures and the members of the bodies responsible for assessing, reporting, or deciding on procurement or subsidy procedures (art. 3.1 Order HFP/55/2023).

In terms of how it works, it could be classified as an indicator detection system, an alert system, or a red flag system. In fact, the order repeatedly mentions that the system generates these warning signals, which it explicitly refers to as red flags.

MINERVA has a preventive purpose, as the analysis is conducted before decision-makers are involved in the contracting or grant awarding process, aiming to prevent, where appropriate, the participation of those with potential conflicts of interest. Those responsible for operations must initiate an ex-ante analysis procedure to assess the risk of conflict of interest before assessing bids or applications in each process, as laid down in Order HFP/55/2023 of 24 January regarding the systematic analysis of conflict of interest risks in procedures implementing the Recovery, Transformation, and Resilience Plan. They will have access to the MINERVA application, where they are required to enter the necessary data to conduct this analysis.

The system processes the data of the decision-makers and interested parties participating in the procedure and cross-references this data with the information in the AEAT databases, as well as with the data in the databases of the Association of Notaries and Registrars, if the appropriate agreement has been signed, according to Additional Provision 112.4 of Law 31/2022. Once this operation has been carried out, the program may return several results as follows: no situations of potential conflict of interest (no red flags), the finding of a possible conflict of interest between decision-makers and participants in the tender or grant (one or more red flags), or an inconclusive analysis, insofar as there is a lack of data on any of the parties involved in the procedure to determine whether or not there is a detectable conflict of interest (one or more black flags).

Part B: Issues of Criminal Law

10. *Compliance assessment of the Spanish legal order with regard to the PIF Directive: overview*

In Spain, Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud affecting the Union's financial interests by means of

criminal law was transposed by *Ley Orgánica 1/2019, de 20 de febrero, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, para transponer Directivas de la Unión Europea en los ámbitos financiero y de terrorismo, y abordar cuestiones de índole internacional* [Organic Law 1/2019, of February 20, 2019, which amends Organic Law 10/1995, of November 23, 1995, on the Criminal Code, to transpose European Union Directives in the financial and terrorism fields and to address international issues].

Some of the main changes to the Spanish Criminal Code brought about by this transposition include adjustments to the amount defrauded that is required to establish a criminal offence against the Treasury of the European Union, an expansion of the definition of a public official in relation to the offences of bribery and embezzlement, resulting in a new and broader definition that goes beyond the previous one in the Criminal Code; and, lastly, the inclusion of criminal liability for legal persons concerning the crime of embezzlement. As for this last topic, Article 31-*bis*, which establishes the criminal liability of legal persons, was introduced in the Spanish Criminal Code in 2010. However, the directive requires that any of the offences it provides for, including embezzlement, should be punishable when committed by a legal person. Before Organic Law 1/2019, embezzlement was the only criminal offence among those regulated by the Directive that did not recognise the criminal liability of legal persons, so the Criminal Code was amended in this regard.

Before Organic Law 1/2019, embezzlement was the only criminal offence regulated by the Directive that did not recognise the criminal liability of legal persons; the Criminal Code was therefore amended in this regard. However, some problems in the interpretation of domestic law have been highlighted as a result of the reform in order to adopt the provisions of the directive:

"To complete this chaos, the Spanish Legislature, through Law 1/2019, forgot to remove Article 306 from the Criminal Code, which addressed fraud concerning expenditures affecting the EU budget. As a result, these cases may be included both in Article 306 and 308; an absolute nonsense that might lead to serious problems concerning two provisions being applicable at the same time (Rodríguez-Ramos Ladaria, 2019). The more logical solution is to consider Article 306 to have been de facto abolished by Law 1/2019" (Benito 2019: 143).

11. *Overview of the adequacy of the Spanish legal order in enforcing the EPPO regulation*

Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (OJ 2017 L 283, p. 1) (hereafter referred to as 'the EPPO Regulation') was implemented in Spain mainly by the adoption of a specific law, the *Ley Orgánica 9/2021, de 1 de julio, de aplicación del Reglamento (UE) 2017/1939 del Consejo, de 12 de octubre de 2017, por el que se establece una cooperación reforzada para la creación de la Fiscalía Europea* (Organic Law 9/2021, of July 1, implementing Council Regulation (EU) 2017/1939 of 12 October 2017 establishing enhanced cooperation for the establishment of the European Public Prosecutor's Office).

In general terms, the implementation of the EPPO in the Spanish criminal justice system represents a significant paradigm shift. According to the EPPO model, the prosecutor is responsible for investigating crimes that affect the financial interests of the Union. In contrast, under the Spanish criminal procedure system, the investigation of potential crimes is directed by a judge (the investigating judge), with the prosecutor's role primarily focused on actual prosecution, except in certain cases such as proceedings involving minors, which are led by the prosecutor (Domínguez 2023: 46-48). Consequently, Organic Law 9/2021 established specific procedural rules for crimes that affect the EU's financial interests, allowing the European Prosecutor to lead the investigation.

Nevertheless, it has been postulated that some provisions of the Organic Law are not fully in accordance with Regulation (EU) 2017/1939, as we will explain in the following section. Moreover, some changes are also needed in order to meet the criteria set out in the case law of the European Court. In this regard, the Judgment of the Court (Grand Chamber) of 21 December 2023 has been specifically pointed out.

Criminal proceedings against G. K. and Others, Case C-281/22 (ECLI:EU:C:2023:1018), in which Articles 31 and 32 of Council Regulation (EU) 2017/1939 are interpreted, should lead to an amendment of Article 51 of Organic Law 9/2021, in relation to the system of judicial authorisation in cross-border investigations by the EPPO (Hernández 2025: 295).

Regarding the appointment of representatives, Article 14 of Organic Law 9/2021 regulates the procedure for selecting the European Public Prosecutor and the EDPs. Specifically, it provides for the appointment of potential European Public Prosecutor and European Delegated Prosecutor positions to be made by a Selection Committee via a selective process based on equality, merit, ability, and publicity.

The current Spanish representative serving as the European Public Prosecutor is Ignacio de Lucas. In the case of the Delegated Prosecutors in Spain, candidates must be Spanish nationals and active members of the prosecutorial or judicial sector, meeting the seniority requirements established by the regulations. Additionally, they must have no disqualifying conditions as outlined in the current legislation. Furthermore, they must show a strong commitment to maintaining independence in the performance of their duties. In the selection process, we will consider knowledge and practical experience related to the competencies of the EPPO, proficiency in the official languages of the European Union, and any other requirements specified by regulations or the terms and conditions of the public call for the selection process.

Seven EDPs will be appointed for Spain. The College of European Public Prosecutors, upon the recommendation of the European Public Prosecutor General, has the authority to appoint the European Delegated Prosecutors designated by the Member States. At present, according to Order JUS/337/2021 of 6 April, whereby the selection process for the appointment of Delegated European Prosecutors, summoned by Order JUS/30/2021 of 22 January and Order JUS/1273/2023 of 10 November, concluding the selection process for the appointment of candidates to the post of EDP called by Order JUS/1090/2023 of 27 September, this position is held by: Oihana Azcue Labayen, Luis Miguel Jiménez Crespo, Gloria Yoshiko Kondo Pérez, Olga Muñoz Mota, Laura Pellón Suárez de Puga, Antonio Zárate Conde and Juan José Navas Blánquez.

12. *Issues of Spain's conformity with the EPPO Regulation. The possibility of reviewing the EPPO's procedural acts*

In this working paper, we will focus on Spain's potential non-compliance with Article 41.2 of the EPPO Regulation. This article states that procedural actions taken by European Delegated Prosecutors (hereinafter referred to as EDP) must be subject to challenge when they have legal effects on third parties.

To clarify, the literal wording of the article states the following: "Procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties shall be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. The same applies to failures of the EPPO to adopt procedural acts to produce

legal effects vis-à-vis third parties which it was legally required to adopt under this Regulation".

In the Spanish national framework, Organic Law 9/2021 does not establish an equivalent clause. Instead, it identifies the possibility of challenging various actions taken by the EDP across different provisions.

The main articles addressing this issue are Articles 8, 90, and 911 of Organic Law 9/2021 (hereinafter, LO 9/2021). However, the possibility of challenging specific actions is also mentioned in other provisions: 23.3, 30.4, 33.2, 34.2, 36.4, 37.2, 38, 39.2, 44.2, 44.3, 63.1, 78.1, 99.3, and 113.3. According to the main articles, the availability to challenge only certain specific actions of the EDP is established:

"Article 8. Powers of the Judge of Guarantees. Within the framework of the procedure regulated by the present organic law, it shall correspond to the Judge of Guarantees: [...] 6. To resolve challenges against the decrees of the European Delegated Prosecutor".

"Article 90. The decrees issued by the European Delegated Prosecutor during the investigation procedure may only be challenged before the Judge of Guarantees in the cases expressly established in this Organic Law".

As a result, under the framework of LO 9/2021, only actions explicitly designated as subject to appeal may be challenged. Although several authors (Rodríguez-Medel Nieto, 2022; Domínguez Ruiz, 2022; Khalaf Reda, 2024) address a wide variety of situations, they do not encompass all potential decisions that could have legal implications.

In Spain, specific lists of appealable actions have been published, to which we refer (Domínguez Ruiz, 2022: 118-120). One can challenge various decisions, including the decree that initiates the investigation procedure, the decree that rejects the submission of exculpatory evidence from the person being investigated, or the decree that denies the appointment of experts suggested by the parties involved.

Thus, other decisions made by the EDP that are not explicitly marked as appealable under LO 9/2021 cannot be appealed to the Judge of Guarantees. For private prosecutions, there are several other possibilities, such as a ruling not to initiate or reopen the procedure or a decision concluding the investigation (Khalaf Reda, 2024: 5).

This possible incompatibility led, in Spain, to a preliminary ruling before the Court of Justice of the European Union. The case originates from an investigation by the EPPO into alleged grant fraud and the forgery of documents in connection with a project financed by EU

funds. In the course of this investigation, following statements from the individuals under investigation, who were the directors of the foundation that received the funds, the EDPS summoned as witnesses several persons who were purported to have worked on the funded project. Doubts had arisen as to whether these individuals had actually taken part in the project, despite the disbursement of expenses for their professional services.

Counsel for the individuals under investigation contested the admissibility of summoning these persons as witnesses and filed a challenge against the summons of one of the two persons whom the EDPs had agreed to hear. In response, Spanish Central Court of Instruction No. 6, acting as the court of guarantees, held that Spanish law does not provide for judicial review of this type of decision by the EDPs. Consequently, it decided to refer a question to the CJEU for a preliminary ruling, pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU).

Regarding this Spanish request for a preliminary ruling, the Opinion of Advocate General Collins (ECLI:EU:C:2024:856) was delivered on 4 October 2024 in Case C-292/23, *European Public Prosecutor's Office v I.R.O., F.J.L.R.*

According to opinion of the Advocate General, the restriction on the ability to subject the decisions or acts of an EDP to judicial review is incompatible with Article 42 of the EPPO Regulation, as stated in paragraph 47:

"47. From the foregoing, it can be concluded that the EU legislature did not intend to limit to specific categories the mandatory judicial review of EPPO procedural acts provided for by Article 42(1) of the EPPO Regulation. Read in the light of the Court's case law cited in the preceding point, as a consequence of that provision, any procedural act an EDP adopts in the course of its investigations that is intended to produce binding legal effects capable of affecting the interests of third parties by bringing about a distinct change in their legal position must be capable of being subject to judicial review by a competent national court. I should add that it is apparent from recital eighty-seven of the EPPO Regulation that the expression 'third parties', to which Article 42(1) thereof refers, is to be understood in a wide sense to include 'the suspect' (43), 'the victim', and all 'other interested persons whose rights may be adversely affected by such acts' (44)".

As a consequence, it can be concluded that the Spanish national regulation fails to conform to the European EPPO Regulation, as not all EDP acts should be subject to judicial review under the Spanish LO 9/2021, as we explained before. However, this general statement

by the Advocate General does not lead to a definitive conclusion regarding the problem that emerged in the original case. In this regard, the Advocate General states that it is on the national judicial authority to determine whether the EDP act is intended to produce legal effects that are binding on and capable of affecting the interests of the third party concerned. Additionally, it is within the discretion of Member States, in the context of their procedural autonomy, to determine the type of judicial review available (see paragraphs 52 and 56 of the aforementioned opinion of the Advocate General).

On the basis of the above, the following conclusion may be drawn:

"63. I therefore advise the Court to answer the questions the *Juzgado Central de Instrucción n° 6 de la Audiencia Nacional* (Central Court of Preliminary Investigation No 6 of the National High Court, Spain) referred for a preliminary ruling as follows: Article 42(1) of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the EPPO, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, the second subparagraph of Article 19(1) TEU and the principles of equivalence and effectiveness, must be interpreted as precluding national legislation pursuant to which persons who are the subject of an investigation by the EPPO may not directly challenge before a competent national court a decision by which, in the context of that investigation, the European Delegated Prosecutor handling the case summonses third parties to appear as witnesses where that decision is intended to produce legal effects vis-à-vis those persons. That issue is for the national court to determine by ascertaining whether such a decision is an act intended to produce legal effects binding on, and capable of affecting, the interests of those persons by bringing about a distinct change in their legal position. To this end, the national court must examine the substance of the decision and assess its effects in the light of objective criteria, such as its content, taking into account – as appropriate – the context in which it was made and the powers of the body that adopted it".

In this scenario, the direct application of Article 42(1) of the EPPO Regulation could ultimately take precedence over domestic legislation. This would permit an interpretation in Spain that all actions by the EDP with legal effects are subject to appeal before the Judge of Guarantees, not just those explicitly mentioned in Spanish law.

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VI. Conclusions

From the previous working paper and the subsequent events organised between the end of 2024 and the beginning of 2025 (the workshop in L'Aquila and the seminar in Toruń), several issues, new evidence, and new research questions arose for the comparative analysis, in addition to a better understanding of the meaning and challenges related to the protection of the EU's financial interests.

On the institutional side, it must first be determined whether all the AFCOS adhere to their mandate. If not, it is essential to understand why and to ensure that the corresponding networking functions effectively for the purposes of Regulation 883/2013 and beyond.

Secondly, it is important to understand the rationale behind the AFCOS model adopted in each country. Why did each Member State choose their specific approach?

In order to clarify the context, it is worth remembering that Regulation (EU, Euratom) No. 883 of 2013 highlights in recital 10 that OLAF's operational efficiency depends to a large extent on cooperation with the Member States. In this regard, the recital mentions the need for Member States to identify the competent authorities capable of providing OLAF with the necessary assistance in performing its tasks. Where a Member State has not established at the national level a specialised service to coordinate the protection of the Union's financial interests and combat fraud, an anti-fraud coordination service should be designated to facilitate effective cooperation and exchange of information with OLAF. In addition, Article 3 of Regulation (EU, Euratom) No. 883/2013 states that Member States may designate an anti-fraud coordination service to facilitate effective cooperation and information exchange, including operational information, with OLAF. Where appropriate, and in accordance with national law, the anti-fraud coordination service may be considered a competent authority for the purposes of this Regulation. In 2020, as part of the most recent amendments to the OLAF Regulation, the provision for the anti-fraud coordination service, known as AFCOS, required improvement to increase understanding of its mandate in relation to cooperation with OLAF. In this regard, Article 12a of Regulation 2013/883, as amended by Regulation (EU) 2020/2223, stipulates that EU Member States are required to designate an AFCOS to facilitate effective cooperation and exchange of information with OLAF, including information of an operational nature, and to

provide or coordinate the assistance necessary for OLAF to effectively carry out its tasks (M. Jurić, 2025, here).

However, the provision does not specify the legal nature, investigative powers, or functional autonomy of AFCOS. This *lacuna* has resulted, at the Union level, in a highly uneven setup: Member States' AFCOS differ in terms of structure, capacity, and functions. Some are endowed with a certain operability and enjoy an autonomous institutional location; others, as in the Italian case, are embedded in ministerial offices with purely administrative functions and lack incisiveness. A further critical issue concerns the role of AFCOS within the new European anti-fraud framework, which has been reshaped by the establishment of the European Public Prosecutor's Office (EPPO) and the strengthening of OLAF's powers. Jurić's (2025) article highlights how the lack of clarity regarding the role AFCOS should play in this new institutional configuration risks marginalising them. Indeed, it is unclear whether they should be limited to logistical and informational support functions or if they should also be key players in the investigative phase. This uncertainty results in inefficiencies, duplication of responsibilities, or gaps in action at the most critical stages of anti-fraud management.

Three out of four countries in this report adopted the prevalence model, establishing their AFCOS within the Ministry of Finance (or a similar entity). Only Italy, since 1992, has taken a partially different approach regarding its AFCOS, creating a 'module' of coordination under the Presidency of the Council of Ministers.

At the same time, the model underlying the functioning of the Belgian AFCOS can be considered a "coordination module" as well, but it is rooted in a more sectoral federal administration that can guarantee a higher level of operability in communication with OLAF. However, Belgium lacks a National Anti-Fraud Strategy (NAFS), unlike Italy, whose AFCOS has a strong administrative mandate, rooted in the Presidency of the Council of Ministers.

In Poland, the coordination of activities for the protection of the EU's financial interests is the responsibility of the Department of Auditing of Public Funds (DAS) in the Ministry of Finance, which acts as the national contact point. According to the existing arrangements, the DAS's jurisdiction is, in principle, limited to assisting OLAF in external investigations concerning EU funds spent under shared management. However, in justified cases, under the principle of loyal cooperation, the DAS also collaborates with OLAF on certain aspects of internal investigations and cases involving irregular expenditure of funds carried out by the EC under direct management. In these areas, the Polish unit of AFCOS can be operational (i.e.,

regarding administrative investigations) but within the limits of its competence, coordinating, where appropriate, the circulation of information at the national level. For this reason, the Polish AFCOS systematically strengthens its cooperation with other institutions responsible for implementing control and investigation activities in the field.

Italy and Belgium, as founding Member States, have long been tasked with protecting the EU's financial interests and appointed their contact points even before OLAF was established. There is clear path dependence on the more traditional approach to this issue, which leans more towards intergovernmentalism than the community method, exemplified by the establishment of OLAF. This also explains the ambiguity in the terms used in Regulation (EU) 883/2013, such as "coordination" and "cooperation" (see BETKONEXT Deliverable 1.3).

The case of Poland is different, as it joined the EU in 2004. It belongs to the group of countries that found OLAF already established (1999). Its functioning appears to be more effective in supporting OLAF's investigations. Even though the Polish AFCOS is an important element of the system protecting the EU's financial interests, it still requires significant improvements. Problems related to the fragmentation of competences, delays in the exchange of information, and a lack of effective coordination of activities may undermine the system's effectiveness.

The case of Spain is even more distinct (we can say "in the middle"). Although, for the moment, the Spanish AFCOS (or 'SNCA') is not carrying out its activities intensively, according to the provisions of the Spanish legal system, it has broad competencies in the area of internal coordination and cooperation with various public entities at all levels of government. It will also be the body responsible for cooperating with OLAF in communicating and investigating fraud affecting the EU's financial interests. Lastly, this entity can conduct its own detection and investigation activities to verify any irregularities in the management of European funds. To fulfil its purposes, the SNCA has the same powers as OLAF in accessing relevant information relating to the facts under investigation. Moreover, the Spanish AFCOS has the authority to guide the creation and implementation of national strategies and to promote the legislative and administrative changes necessary to protect the financial interests of the European Union.

Comparative analysis suggests that the effective functioning of the AFCOS vis-à-vis the provisions of Regulation (EU) 883/2013 (as more recently updated) and its corresponding

networking must still be achieved in these countries. The comparative analysis, in the context of EU law, also suggests that the Regulation mentioned above could be improved to better clarify the mandate of the various AFCOS and influence the administrative and institutional models to be adopted internally in each Member State.

It seems to be a matter of path dependence regarding the traditional national and institutional approach to the protection of the EU's financial interests. It is also a matter of the difficulties in the integration process concerning this aspect of the European legal order, rooted in Article 325, TFEU. There is a marked contrast between the institutional levels, with the emergence of new European institutions on the topic (i.e., OLAF, EPPO, and now also the Anti-Money Laundering Authority, AMLA) and the substantive level (the assimilation principle and the standards of controls, rooted in the Member States).

One of the most pressing issues to be addressed is the effectiveness of AFCOS's coordinating role as a sorting point within each national legal system, both in the descending phase of being operative in interactions with OLAF and in the ascending phase of having a voice in discussing European anti-fraud policy (in the AFCOS networks, COCOLAF, and GAF). The existence of a NAFS could support this effectiveness, ideally in both directions. It is significant that, in the four countries analysed in this working paper, only Italy has adopted a NAFS, and this appears to be the result of the effectiveness of AFCOS during the ascending phase. However, due to the path dependence inherent in its traditional role, the Italian AFCOS model is still not suited to more "direct" operative collaboration with OLAF during investigations. Conversely, where a NAFS has not been adopted (Belgium) or even announced (Poland), they appear more effective in the descending phase, probably interpreting their role differently (and, in fact, these AFCOS are rooted in the Ministry of Economy and Finance). Lastly, in Spain, the AFCOS appears "dormant", notwithstanding its strong potential in both the descending (operative powers concerning investigations) and ascending phases (oriented toward steering powers). However, the adoption of the NAFS is at the centre of public debate in Spain, and the implementation of the national Recovery and Resilience Facility there appears to be a lever for future advancement in the sector.

It has recently been reaffirmed, following an opinion already issued in 2020 by Thomas Wahl regarding candidate (and potential candidate) countries for EU membership (here), that achieving goals related to the protection of the EU's financial interests necessitates far greater cooperation with both EU institutions and partner authorities in Member States, as well as with

stakeholders outside the European Union (Jurić, 2025, here). In other words: "in order to ensure that all available means are being used to fight fraud and corruption detrimental to the EU's financial interests in the future anti-fraud landscape, it is necessary to establish close relations with all the players involved, both at the EU and national levels, while ensuring that their individual roles and mandates in this regard are clearly prescribed". In this context, Wahl observed in the past that it is useful to consider where, in the fight against fraud and the protection of the EU's financial interests, the capabilities of AFCOS could, and should be, utilised.

Such considerations are particularly problematic given the currently limited mandate of the AFCOS and their somewhat unclear role regarding their purpose and added value for national systems.

In conclusion, an important operative issue is whether an AFCOS has investigative powers like those of OLAF. In this descending phase, it is interesting that OLAF itself can serve as a model for the national AFCOS, especially in countries that will join the EU in the coming years (as in the case of Romania). On the operative side, an AFCOS should have a certain level of independence from politics and achieve a degree of autonomy among administrations due to its technical expertise.

A different matter is the more strategic involvement in intergovernmental decision-making and community methods. Nevertheless, it should be noted that the European Commission currently has its own anti-fraud strategy, which Member States should also develop. However, there is no single EU anti-fraud strategy.

As observed during the joint conference of the national Anti-Fraud Coordination Services (AFCOS) from the EU Member States and their counterparts in candidate countries and potential candidates in Brussels on 15-16 October 2024 (here), AFCOS play a central role in key areas such as the recovery of funds, due to their specific insight on debtors located in their territories. Discussions on the PIF report and its new features, along with the necessity for Irregularity Management System reporting to fully exploit the potential of data mining and risk scoring, also emphasised the added value that AFCOS contribute to the broader fight against fraud (for some conclusions on these topics, see below).

In summary, adding to regulatory weakness and functional confusion is a chronic lack of resources and powers. In many Member States, AFCOS do not have direct access to sensitive data or national databases, cannot request information on their own, and, most importantly, are

not authorised to conduct inspection or investigation activities. In this setup, as Juric notes (M. Jurić, 2025, here), they cannot act as active nodes in the anti-fraud network but are reduced to mere intermediaries between the competent national authorities and OLAF, with an extremely limited effective capacity for intervention. The absence of a clear and binding regulatory framework has thus undermined the possibility of making AFCOS truly effective tools in the European anti-fraud system. To overcome these critical issues, a reform of Article 12a of Regulation 883/2013 would be desirable, explicitly defining the legal status, minimum powers, and autonomy requirements of the AFCOS. Alternatively, the Commission could exercise its competence under Article 18 of the same Regulation by adopting implementing acts setting shared standards on structure, powers, and operational resources. Such actions would address existing inequalities among Member States and ensure a minimum level of efficiency and uniformity in the AFCOS' operations (M. Jurić, 2025). Without a clear regulatory definition, adequate resources, and proper integration with other actors in the European anti-fraud system, AFCOS risk remaining a merely formal figure, unable to truly impact the protection of the Union's financial interests.

Shifting from an institutional to a substantive perspective, despite the significant heterogeneity in the standards for controlling irregularities and fraud, which have become more serious with the advent of the RRF, the EU's directives and regulations (as well as its case law; see the previous BETKONEXT working paper on this point) have gradually begun to change the trajectory of the discipline.

Some improvements can be observed in the area of administrative law, particularly regarding those areas of intervention where prevention through administrative solutions, such as controls and alert mechanisms, can be significant. These include avoiding conflicts of interest and double funding (through anti-corruption and transparency strategies), increasing vigilance on administrative and financial operations by strengthening the whistleblower regime, broadening and enforcing anti-money laundering measures and their applicability, and combating organised crime infiltration.

The advent of the RRF and the pressing need to manage, monitor, and control its implementation are injecting new vitality into this group of disciplines, which can be considered the frontier of administrative surveillance for the protection of the EU's financial interests.

It may also be part of this core administrative law for the protection of the EU's financial interests, particularly concerning the liability of civil servants in relation to the management of public resources, including those of European origin. However, in this context, the influence of the EU's legal system may be weaker, given the principle of procedural autonomy.

Shifting our attention to digital tools, in recent years, the European Union has placed a strong emphasis on the digitalisation of public administration, particularly in managing EU funds under mechanisms such as (and it is no coincidence) the RRF. The integration of digital tools aims to enhance efficiency, transparency, and accountability in the management of public funds. However, deploying such tools requires careful monitoring to ensure compliance with legal standards and the protection of citizens' rights, especially in terms of privacy and data protection.

One of the cornerstone elements of this reform is the reinforcement of the Early Detection and Exclusion System (EDES). Under the revised framework, co-legislators agreed to broaden the scope of EDES to encompass the most serious categories of misconduct – namely, fraud, corruption, and money laundering – not only within the realm of shared management but also in cases involving direct management in cooperation with Member States. These expanded provisions will apply to all programmes adopted or financed on or after 1 January 2028.

The reform further introduces important procedural and substantive improvements to the EDES framework, including (i) the extension of exclusion measures to beneficial owners and affiliated entities of a primary excluded party, thereby addressing indirect participation and circumvention risks, (ii) the introduction of new grounds for exclusion, such as failure or refusal to cooperate with investigations, audits, or controls conducted by EU-level oversight bodies (e.g. the European Anti-Fraud Office, the European Public Prosecutor's Office, or the European Court of Auditors), and (iii) the establishment of an expedited procedure before the EDES Panel to facilitate timely and efficient decision-making in urgent or high-risk cases.

In a further significant development, the revised Financial Regulation establishes a formal legal basis for creating a modernised and compulsory risk-scoring and data-mining system. This upgraded instrument will be based on the existing ARACHNE platform, which has already demonstrated its added value in the voluntary context. The new tool will be

deployed across all modes of management – shared, direct, and indirect – thereby ensuring uniformity of standards and comprehensive coverage across all EU spending programmes.

Under the provisions of the recast Regulation, all Member States will be required to submit relevant data to the new tool during the upcoming Multiannual Financial Framework. This obligation is intended to facilitate a risk-based approach to fund management across the EU, enabling consistent and evidence-based monitoring, early warning, and control.

Before its mandatory rollout, the European Commission is required to conduct a comprehensive assessment of the tool's operational readiness by 2027. This evaluation will focus on several critical aspects, including the system's interoperability with existing EU and national IT platforms and databases (to prevent redundant reporting obligations), the customisation of risk indicators to meet users' specific needs, the integration of artificial intelligence and machine learning technologies to enhance data processing and risk interpretation capabilities, and compliance with applicable data protection rules under the General Data Protection Regulation (GDPR). Based on the outcome of this assessment, the co-legislators may reconsider the possibility of making the system compulsory for all relevant stakeholders.

Lastly, in an effort to alleviate the administrative burden on Member States and implementing partners, the recast Financial Regulation introduces additional measures to promote interoperability and standardisation. Specifically, the data categories extracted from the risk-scoring and data-mining tool have been harmonised and integrated into the Commission's Financial Transparency System. This reform will improve the accessibility, consistency, and quality of publicly available information regarding the use of EU funds, thereby fostering greater public trust and democratic accountability in the Union's financial governance.

The experiences of Italy, Poland, Belgium, and Spain provide a diverse perspective on how digital tools are being used to oversee the allocation of EU funds. Each country's approach reveals varying levels of integration, regulatory frameworks, and institutional capacity.

Poland stands out for its advanced and structured implementation of the CST2021 system, which incorporates multiple modules to manage the full lifecycle of projects co-financed by EU funds. The system facilitates everything from grant applications to ongoing project monitoring, payment submissions, procurement, and auditing. Key modules like e-Controls ensure transparency and efficiency in project oversight, while the SKANER module

helps prevent conflicts of interest and ensures compliance with regulations. The comprehensive nature of CST2021 reflects a well-established digital infrastructure, and its integration with EU and national regulations provides a solid foundation for effective fund management.

Italy, on the other hand, employs a combination of national tools, such as Re.gi.s and the European Commission's ARACHNE. ARACHNE's role in risk assessment and monitoring of EU funds aligns with Italy's initiatives to enhance transparency and mitigate financial risks, including potential conflicts of interest and fraud. Italy's system highlights the importance of interconnecting different tools to strengthen fund management, particularly through coordination between national and regional authorities. Although adoption is still evolving, its integration into Italy's administrative processes marks a significant step toward improved governance of EU funds.

Belgium's experience with the OASIS tool illustrates a more complex situation. While OASIS has proven effective in detecting fraud, it has faced significant challenges related to transparency, legality, and data protection. The tool's opacity, particularly regarding algorithmic processes and its delayed legal framework, has raised concerns about privacy violations and automated profiling without adequate safeguards. However, the recent adoption of ARACHNE by Belgian regional authorities, especially in the management of the European Regional Development Fund (ERDF) and European Social Fund (ESF), signals a shift towards greater transparency and compliance with EU standards. This evolution underscores the need for clear legal frameworks and stronger regulatory oversight to ensure that digital tools are used responsibly and ethically.

In Spain, the use of ARACHNE remains limited, as the national administration has opted to develop its own data-mining tool, MINERVA, for the systematic analysis of conflict-of-interest risks in managing PRTR funds. MINERVA focuses on preventing conflicts of interest before the award phase of procurement and subsidy procedures, utilising data from national and corporate databases. The tool is mandatory for all procedures involving PRTR funds and requires decision-makers to perform *ex-ante* studies to identify potential red or black flags. This preventive approach helps to ensure that conflicts of interest are addressed before they can influence decision-making, providing a more targeted and focused mechanism compared to ARACHNE.

What this comparative overview reveals is a common trend towards the digitalisation of oversight mechanisms for EU funds, albeit with differing levels of implementation and technological sophistication across Member States

Poland and Italy exemplify a more coordinated approach, integrating digital tools across various stages of fund management. In contrast, Belgium and Spain emphasise the risks of partial or fragmented adoption, voicing concerns about the transparency of these tools and the potential for legal gaps. However, both countries are making progress in improving the integration and legal oversight of these tools.

Ultimately, while the digital transformation of public administration offers significant potential for improving the management, monitoring, and control of EU funds, it is essential that these systems be implemented in full compliance with the law, transparency, and the protection of citizens' rights. The experiences of these countries reinforce the need for robust legal frameworks, clear regulatory guidelines, and the integration of human oversight to ensure that digital tools are not only efficient but fair, accountable, and aligned with the principles of good governance. The role of EDES in facilitating secure and transparent data exchange will continue to be crucial as Member States refine and expand their digital infrastructures for EU fund management.

At the supranational level, the Irregularities Management System represents a notable example of institutional integration within the European Union's anti-fraud architecture. Irregularity Management System (IMS) is a web-based telematics platform designed to enable Member States to draft and submit structured irregularity reports to the European Anti-Fraud Office (OLAF) in accordance with EU financial regulations. While the financial flows under the National Recovery and Resilience Plans (NRRPs) are not currently subject to IMS oversight, the system offers a compelling model for future integration. Specifically, the IMS could serve as the foundational infrastructure for a comprehensive interoperable database encompassing all EU-related funds, thereby strengthening consistency, traceability, and control.

During the last AFCOS joint conference in Brussels in October 2024, the participants addressed, unsurprisingly, the shift in perspective and design needed to combat fraud in performance-based financial instruments, such as the RRF and the Ukraine facility. These new instruments represent substantial funds and necessitate innovative approaches to financial controls and investigations. Nothing demonstrates the abuse of EU funds more clearly than

bank account transfers. This is why OLAF's recently acquired power to access banking data in Member States and cooperating countries is so significant. It has already led to success stories on how to track the movement of money across borders (here): "[…] illustrated concrete examples where the use of AI to generate profiles for monitoring purposes, support language processing and machine learning played a key role in complex, transnational investigations. Fraudsters use AI recklessly, free from any legislative or ethical limitations. It is the role of anti-fraud actors to think outside the box and develop joint, fast, and creative countermeasures in a challenging regulatory environment".

The IMS system requires obligatory quarterly reporting of irregularities, which must be submitted within two months following the end of each reporting period, following the so-called "first administrative or judicial finding" ("PACA") – defined as the initial written determination by a competent authority identifying an irregularity. Reports are compiled through a series of logically organised forms, covering key elements such as fund identification, the nature of the irregularity, and the procedural status of any ongoing administrative, criminal, or recovery actions. User roles are hierarchically structured (e.g., creator, sub-manager, manager), ensuring both procedural clarity and real-time information exchange.

In the Italian context, for example, the IMS has facilitated the work of the Committee for the Fight against Fraud (COLAF, the Italian AFCOS), which has used the system to establish a coordinated network of contact points across central and local administrations. This network has enhanced the sharing of best practices and supported the resolution of procedural challenges in real time. Given its operational maturity and institutional embeddedness, the IMS presents a viable starting point for extending anti-fraud control mechanisms to NRRP funds and promoting a unified, EU-wide approach to irregularity management.

The divergences in the definition of "first administrative or judicial findings" (PACA), coupled with related practices of communicating irregularities and fraud, can be seen as obstacles to the proper functioning of the platform and, consequently, to the effectiveness of the monitoring and oversight activities conducted by national administrations and OLAF.

The concept of PACA is particularly important, as it determines the specific quarterly date when an irregularity should be communicated to the EC. Based on sectoral EU regulations, Member States must send information about established irregularities within two months

following the end of each quarter from their detection, as confirmed by the primary administrative or judicial finding.

During the previous funding period of 2014-2020, the Commission adopted specific delegated regulations regarding the functioning of the IMS and the obligation to report. Currently, the legislative approach differs from the past, featuring a special annexe to the Common Provisions Regulation.

Currently, the legal basis for the PACA is found in Article 69(2) and (12) of Regulation (EU) 2021/1061. Para. 2 of Art. Article 69 of Regulation (EU) 2021/1061 states that Member States must ensure the legality and regularity of expenditure included in the accounts submitted to the Commission and take all necessary actions to prevent, detect, correct, and report irregularities, including fraud. These actions include collecting information on the owners of the recipients of Union funding. These data will then be made available to OLAF and the Court of Auditors. Regarding the funding period 2021-2027, the concept of PACA is presented descriptively (but not as a definition) in Regulation 2021/1060 by including it in the general principles that define the obligation to notify the EC of irregularities (Annex XII, section 1, point 1.1). According to Article 69(2), there is an obligation during this programming period to inform the Commission about "irregularities that have been the subject of a first written assessment by a competent authority, either administrative or judicial, which has concluded on the basis of specific facts that an irregularity has been committed, regardless of the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure". In particular, Article 69(12) of Regulation (EU) 2021/1061 and Annex XII, item 1.1, of this Regulation mention the obligation of Member States to report irregularities through the Irregularity Management System (IMS) based on an initial written assessment by a competent administrative or judicial authority, which, on the basis of specific facts, has established the existence of an irregularity, without prejudice to the possibility of revising or withdrawing such a finding in light of developments in the administrative or judicial proceedings. The lack of a standard template for drafting PACAs undermines uniformity of form and content. Article 74(1) of Regulation (EU) 2021/1060 requires Member States to establish an effective system of management and control but does not define a single template for the documentation of findings. Adopting a case study approach, the MEF-RGS (the General Accounting Office in the Ministry of Economy and Finance) guidelines in Italy (see here), which cover forms of audits of European funds, define some good

practices but do not impose a single form of PACA. The lack of standardisation in information limits the comparative effectiveness of documents and hampers the analysis work of audit authorities.

Another issue concerns the timing of the drafting of the instrument under consideration. In fact, Article 63 of Regulation (EU) 2018/1046 establishes the obligation for Member States to prevent, detect, and correct irregularities in a timely manner. Accordingly, Article 2 of Legislative Decree No. 68 of 2001 assigns the Italian *Guardia di Finanza* oversight tasks to protect the EU budget; however, it does not set deadlines for drafting formal acts such as the PACA. Delays in compilation can jeopardise the timely initiation of corrective actions, the recovery of unduly disbursed amounts, and the activation of legal proceedings. In addition, the lack of binding deadlines encourages operational discrepancies among various authorities. In addition, the same lack of standardisation facilitates drafting PACAs containing formal errors or missing documentation, leading to a loss of evidentiary value in court. Examining these dissimilarities, some suggestions arise spontaneously to strengthen the effectiveness of PACAs. First, the introduction of a unified model, the PACA, with national value, which includes both mandatory and optional sections. Second, it might be useful to improve the way PACAs are digitally transmitted to OLAF; in fact, there is no uniform practice for PACA-based reporting to OLAF. In some cases, established facts are not reported in a timely manner or are not considered serious enough to warrant intervention by the European Anti-Fraud Office.

The shift from executive to legislative competence in regulating IMS operability may signal the importance of the topic in the European landscape and public opinion. It is not something to be delegated to the Commission but rather something to be openly discussed *ex ante*.

Generally speaking, the obligation to notify the EC of irregularities in the IMS rests with the competent authorities of the management and control system of EU funds. The AFCOS service is typically responsible for coordinating the process, establishing, and maintaining the IMS reporting structure, managing IMS user rights, and verifying the accuracy of the notifications, while the responsibility for detecting and notifying the EC of irregularities always lies with the reporting authorities (Managing Authorities/Intermediate Bodies).

In Poland, the document constituting the primary administrative or judicial finding may be recognised, depending on the specific nature of the case and the decision of the competent reporting authority. For example, this includes the results of the control or other documents

concluding the control or audit, the decision to reject the application for funding, the decision to refuse to sign the co-financing contract, the decision to refuse to reimburse expenses, the decision to initiate an investigation by law enforcement authorities, a court verdict, etc.

This document should be the first written assessment for a given case, confirming the occurrence of an irregularity. The catalogue is auxiliary in nature and consists of an open set, meaning that other documents not included in the exemplified list may also be regarded as documents that constitute the primary administrative or judicial finding.

Based on the documentation collected in any given case, the competent reporting authority decides each time which document meets the requirements set out in the aforementioned definition of the primary administrative or judicial finding. The selection of the proper document constituting the primary administrative or judicial finding is crucial to ensure a timely proceedings; the date of this document is particularly important, as it determines the period when the irregularity shall be communicated to the Commission. Internal procedures of the reporting authorities should indicate which types of documents are used for the primary administrative or judicial determination related to a given operational programme or fund, and ensure that all cases for which the date of such a document falls within each quarter are submitted to the EC in the same reporting period.

Similarly, in Italy, for example, the Italian AFCOS, with a Resolution of 22 October 2019, approved the 'Guidelines on the modalities of communication to the European Commission of irregularities and frauds to the detriment of the European budget' and its Annexes (see BETKOSOL D.1, 2021). As of 2019, these Guidelines have not been updated. However, some elements suggest that they may be updated soon. Moreover, the 2024 COLAF Annual Report highlights some problems with filling in the IMS, which raises the unresolved issue of the legal definition of the "First administrative or judicial findings" report in the European context.

Regarding the criminal law and criminal procedure sections of this study, the analysis focused on the implementation of the PIF Directive (EU) 2017/1371 and the work of the EPPO in the light of the specificities of national criminal justice systems, with particular reference to the four countries of the case studies contained in this research.

From the methodological perspective, this work, consistent with the analysis carried out in the previous deliverable (see BETKONEXT D1.3), has been designed to undertake an in-depth examination of the same aspects in each country. The main objective of this approach is

to obtain useful insights from the comparison, which will help trace the evolution of legislation for the protection of European financial interests in the field of criminal law, also with a view to identifying problems that require attention for possible further reform.

More specifically, the research aims to understand, on one hand, whether there are recurring conformity issues in the different legal systems concerning the provisions of the PIF Directive and the EPPO Regulation (EU) 2017/1939 and to identify what those issues are; and, on the other hand, to assess what the impact of such possible conformity issues might be on the effective protection of the EU's financial interests.

This is because the PIF Directive defines the EPPO's material competence, meaning that this area is significantly affected by how the Directive is transposed at the national level. Furthermore, while the EPPO Regulation is directly applicable, Member States have differing institutional frameworks and procedural rules. The EPPO's activities rely on the domestic law established by each national system, so it is essential to assess the extent to which individual countries have aligned their legislation with the Regulation and to identify the most common issues in this context.

Within this framework, the analysis conducted in this working paper identified several conformity issues that seem, interestingly, to be shared by the countries selected as case studies.

Following the thematic order proposed in the previous sections on individual countries, it is appropriate to distinguish between conformity issues related to the transposition of the PIF Directive and issues – of a more procedural nature – that concern the activities of the EPPO.

Regarding the first area, it should be noted that the European Commission itself has pointed out, in its reports on the implementation of the PIF Directive published so far, that in principle, all Member States have transposed the main provisions of the Directive, although there is still room for improvement. Starting from these observations, the comparative analysis in this working paper highlighted at least three main conformity issues in the countries under study: *i)* the not always consistent criminalization of the conduct provided for in Arts. 3 ff. of the PIF Directive; *ii)* the lack of a provision regarding the attempted form for some criminal offences, given that, pursuant to Art. 5 of the Directive, Member States must ensure that an attempt to commit fraud affecting the Union's financial interests (Art. 3) and misappropriation (Art. 4, para. 3) is punishable as a criminal offence; *iii)* the problematic restrictions on jurisdiction for PIF offences, which Art. 11, para. 1 of the Directive links to the principle of territoriality and the principle of nationality of the offender.

Italy and Poland serve as notable examples in relation to national criminal offences.

Generally, Italy demonstrates a significant level of compliance with the PIF Directive; however, recent changes concerning crimes against public administration may lead to potential misalignments. Indeed, as explained earlier, in 2024, the Italian legislator repealed the crime of abuse of office and, at the same time, introduced a new offence under Article 314-*bis* of the Criminal Code, entitled "Improper allocation of money or movable property". In the current normative scenario, this new offence may lead to conformity issues in two respects: regarding the material object of the conduct (Article 314-*bis* of the Italian Criminal Code pertains only to money or other movable items, while Article 4(3) of the Directive uses more general terms, specifically "funds or assets"). It limits the scope of incrimination to conduct under Article 314-*bis*, which is punishable only when conducted in violation of specific laws, decree-laws, or legislative decrees that allow no margin of discretion, excluding the improper allocation of public property in contravention of regulatory acts or laws that do grant discretion to public officials; the Directive does not impose such limitations.

Gaps in transposition were also observed in the Polish legal system, notably the absence of criminalisation for failing to disclose information that violates specific obligations when granting financial support. Additionally, objections were raised regarding the criminalisation of misuse of funds or assets for purposes other than their original intent, as well as the misappropriation of lawfully obtained funds that harm the financial interests of the EU.

Together with Belgium, Poland is also a significant case regarding several other aspects of potential non-conformity mentioned above. Specifically, neither Polish or Belgian legislation treat attempts to commit certain offences as criminal acts relevant to the PIF context.

In Poland, the inconsistency pertains to fiscal offences, as stated in Article 82 of the Polish Fiscal Criminal Code, which criminalises exposing public finances to depletion via improper payment, collection, or misuse of a subsidy or subvention. However, despite the PIF Directive lacking provisions for such derogations, it does not provide for the criminalisation of attempt.

Similarly, in Belgian criminal legislation, considering Article 491 of the Criminal Code on embezzlement and Article 492-*bis* of the Criminal Code on the misuse of company assets, which could fall under Article 3 of the PIF Directive when the relevant conduct concerns the EU's financial interests, the research indicates that attempt to commit such offences is not criminalised.

Another problem related to non-compliance with the PIF Directive concerns jurisdictional rules. Two of the countries analysed in this research impose restrictions in their national legislation related to the requirements of Article 11 of the Directive.

Indeed, Belgian law currently requires a victim's complaint or a report from the foreign country to prosecute a Belgian national who commits a crime abroad against a foreign national. However, the PIF Directive mandates that crimes affecting the EU's financial interests must be prosecuted without the need for a report or denunciation.

Additionally, the Polish Criminal Code, in the context of the principle of nationality, states that Polish criminal law applies to a Polish citizen who has committed an offence abroad (Art. 109 of the Criminal Code), but only when the act committed abroad is an offence under the law in effect at the place where it occurred – i.e. the principle of double criminality (Art. 111 §1 of the Criminal Code). This rule does not seem to align with the Directive, and some scholars propose introducing an exception to this principle, as is already the case, for example, in Polish criminal tax matters (see Art. 3 §3a of the Fiscal Criminal Code).

Moving to the second main strand of analysis – i.e. compliance with the EPPO Regulation – the results of this study indicate that problems are quite different across the countries examined, in the sense that, as anticipated, considerable divergences between judicial systems and rules of criminal procedure are reflected in country-specific issues. Nevertheless, also in this context, some thematic clusters could be identified, concerning the following issues: *i)* reporting of crimes; *ii)* resolution of jurisdictional conflicts; *iii)* prosecution models and independence of the EPPO.

As for the matter of reporting criminal offences, paragraph 1 of Article 24 of the EPPO Regulation requires that institutions, bodies, offices, and agencies of the Union, as well as the competent authorities of the Member States, shall report without undue delay to the EPPO any criminal conduct in respect of which it could exercise its competence.

Considering the countries chosen for this study, as seen both Italian and Belgian legislation are not fully in line with such a rule. Under Italian law – see Article 14 of Legislative Decree No. 9/2021 – there is a dual notification system: i.e. the report should be sent to both the EPPO and the National Prosecution Office; the EPPO must confirm within thirty days that it will not proceed with the case; after this, 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 thirty days.

Also Belgian law appears to be non-compliant in this respect, as it is the National Prosecution Office that should report the case to the EPPO, which means that the national authorities should submit the report to the first, rather than directly to the EPPO (e.g. see Art. 156/1(3) of the Judicial Code).

Furthermore, another contentious issue concerns the conformity with 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. In Italy, Article 16 of Legislative Decree No. 9/2021 has been deemed non-compliant with the Regulation as it designates the General Prosecutor 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 Art. 267 of the TFEU.

Similarly, the research conducted in previous sections highlights non-compliance with the aforementioned provision of the EPPO Regulation in Belgium, as a higher national prosecutorial body is designated to resolve conflicts of competence with the EPPO. Such a body is not considered a court or tribunal under EU law and, therefore, cannot refer questions to the Court of Justice of the European Union, as required by the Regulation.

Lastly, differences in prosecution models adopted by individual countries might risk undermining the independence of the EPPO that the EU Regulation seeks to establish.

There are instances, such as in Spain, where the legislator has introduced specific procedural rules for crimes affecting EU financial interests to allow the European prosecutor to lead the investigation (see Organic Law No 9/2021). In fact, establishing the EPPO signifies a relevant paradigm shift in Spain. Under the EPPO model, the prosecutor is responsible for investigating crimes that impact the Union's financial interests, whereas the Spanish criminal procedure system designates a judge (investigating judge) to oversee investigations of potential crimes, with the prosecutor primarily serving the role of accuser, except in certain cases, such as proceedings involving minors, which are led by the prosecutor.

In Belgium, one key issue that may still affect compliance with the provisions of the EPPO Regulation is the continued involvement of investigating judges (or, in some cases, other administrative authorities) in EPPO cases. Although the EPPO Regulation emphasises the autonomy of European Delegated Prosecutors in conducting investigations, the Belgian legal system mandates that certain investigations should be led by an investigating judge. In particular, investigations into PIF offences involving intrusive investigative measures – as

outlined in Arts. 55 and 56 of the Belgian Criminal Procedural Code – must be conducted by an investigating judge, rather than by European Delegated Prosecutors or the European Prosecutor. In such situations, the investigative judge independently collects exculpatory and incriminatory evidence. At the same time, the latter are excluded from the procedure and receive the criminal file only after the investigation has been completed. The European Delegated Prosecutors/European Prosecutor may request additional investigative measures, but the investigative judge still has the authority to conduct the investigation.

The issues outlined above, as previously mentioned, are recurrent in more than one legal system. However, this does not exclude additional aspects that are of specific relevance in individual national legal systems – such as the criminal liability of legal entities, as highlighted in the Polish case – or regarding the possibility of reviewing the procedural acts of the EPPO, pursuant to Article 41(2) of the EPPO Regulation in the Spanish case.

In short, several years after the adoption of the PIF Directive, it is surprising to note that there are still compliance problems in the legislation of the countries at the centre of this study. Although limited in scope, these issues sometimes fall short of the minimum level of criminalisation required.

This is very important because these conformity issues can negatively impact EPPO's work, as European Delegated Prosecutors may be forced to work with national criminal provisions that are not in line with EU standards.

Therefore, there is a need to question the inherent limitations of the EU Directive instrument in fields that have already been the focus of harmonisation measures for decades (such as the PIF area) and regarding which new reform proposals are emerging, aiming to utilise again the instrument of harmonisation by minimum standards under Article 83 TFEU.

Of course, exploring bolder EU legislative strategies is a complex undertaking, as EU crimes and rules of direct application in the criminal sphere may be perceived as jeopardising national sovereignty and as a means of forcing a choice whose legitimacy is still debated among scholars and institutions. This shows, once again, that the PIF area is crucial for discussing issues of fundamental importance for developing European criminal law, which will be further addressed in subsequent phases of this research.

In the light of the above considerations, cooperation and integration through common instruments and procedures remain complex in the transnational field of protecting the EU's financial interests. From the perspective of EU law, a new critical point emerges that deserves

detailed examination: the strengthening of the administrative liability of public bodies. This critical point will be briefly presented in these conclusions and then analysed in detail in the coming working papers. The issue of administrative liability for public entities regarding the irregular use of European funds is one of the most critical, yet least fully regulated, aspects of the Union's current financial governance system. Despite the fact that the principle of sound financial management is firmly anchored in Article 317 of the Treaty on the Functioning of the European Union (TFEU), which places an obligation on the Commission and the Member States to implement the budget "in cooperation" and to comply with the criteria of economy, efficiency, and effectiveness, there is to date no unified regulatory framework that directly regulates the liability of national public entities for irregularities or fraud in the management of funds (see for further discussion Presutti A., Bernasconi A., 2025).

This gap seems all the more relevant considering that Article 63 of Regulation (EU) 2018/1046 (the "Financial Regulation"), which lays down the general rules for the implementation of the Union's budget, reiterates the importance of sound financial management in the area of shared governance. It requires Member States to ensure that the systems and procedures adopted are capable of preventing, detecting, and correcting irregularities. However, this provision does not translate into a concrete Regulation of the administrative liability of the entities involved, which remains subject to national law, resulting in obvious inconsistencies and, in some cases, gaps in penalties or ambiguities in application.

The issue is even more sensitive regarding the management of European structural and investment funds, and even more so concerning the resources of the Recovery and Resilience Facility (Next Generation EU), where local and central public bodies play an essential operational role in the selection, implementation, and reporting of projects. In the absence of clear and direct accountability for the bodies in the event of non-compliance or negligence, there is a risk that accountability will be dispersed along the administrative chain, leading to a loss of efficiency in the corrective and sanctioning mechanisms. In this context, a possible regulatory evolution could be represented by the introduction of specific strict liability clauses in sectoral regulations or spending programmes. A useful basis for inspiration can be found in Regulation (EU) 2021/1060, which lays down common provisions applicable to the European Regional Development Fund (ERDF), the European Social Fund Plus (ESF+), and other structural funds. Articles 71 to 74 of this Regulation govern the responsibilities of the management, certification, and audit authorities, laying down specific obligations in terms of

internal control and financial correction. Article 73 establishes that national authorities must prevent, detect, and correct irregularities, including fraud, by applying the financial corrections necessary to protect the Union budget. Although these obligations are addressed to well-defined institutional entities, it is not to be ruled out that a similar approach could also be extended to public implementing bodies, through more ambitious legislation or the inclusion of specific conditions in the implementing regulations of individual programmes.

Such an approach, which would introduce elements of objective liability or liability for negligence in supervision, would have the merit of strengthening the culture of administrative legality and responsible management, placing public bodies under more stringent obligations regarding internal control and risk prevention. It would essentially involve overcoming the current fragmented model in which responsibilities are often channelled towards individuals or central bodies, leaving the responsibility of the body itself in the shadows.

Naturally, such a reform should consider the principle of proportionality and the structural differences between the public bodies involved. For this reason, introducing a uniform regime of administrative liability might well occur gradually, perhaps through a review of the sanctions system provided for in the sectoral financial regulations and national transposition legislation, accompanied by stronger training, transparency, and internal audit measures. Essentially, increasing the administrative liability of public bodies in the use of European funds appears to be an essential step towards improving the effectiveness of the system for protecting the financial interests of the Union. If properly modelled on the principles of European administrative law and Union financial law, this regulatory development could constitute a powerful tool for preventing irregularities and promoting good administration, in line with the objectives of Article 317 TFEU and the Financial Regulation.

The analysis conducted in this working paper clearly highlights the current critical issues that affect the European system for the protection of financial interests, especially in the context of the management and control of Union funds. The lack of a harmonised definition of the PACA, the regulatory ambiguities regarding the role and structure of AFCOS, the absence of a clear regime of administrative liability of public bodies, the inadequate integration of digital technologies in control systems and the still imperfect cooperation between OLAF and EPPO constitute high priority areas for regulatory intervention. The coherence and effectiveness of the entire European anti-fraud system depend on the ability of the Union and the Member States to fill the current regulatory gaps through a combination of legislative

reforms, delegated acts, and implementing acts that introduce shared minimum standards, harmonised procedural obligations, and interoperable digital platforms. Only by strengthening the regulatory framework and providing the involved institutions with clear legal tools, adequate resources, and specific expertise will it be possible to ensure effective protection of the European budget and full implementation of the principle of sound financial management enshrined in Article 317 TFEU.