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## **Controlling the Spending of EU Funds in Italian and Polish Law Against the Background of EU Regulations<sup>1</sup>**

**Abstract:** Spending from the budget of the European Union (EU) should be done correctly, in line with EU and Member State legislation. However, minor or major irregularities cannot be avoided in the disbursement of EU funds, so procedures must be in place to detect and eliminate them. Control procedures are key in this respect. This article reviews the EU regulations that apply to the control of EU spending and analyses the control concepts adopted in two Member States: Italy and Poland. The authors found that in these two countries, the control of EU spending is carried out by a number of actors. Solutions for improvement were identified. The authors find it reasonable to conclude that administrative controls on the use of EU funds in Italy and Poland can be considered as on the path of being effective and efficient.

**Keywords:** control of EU expenditure, European Union budget, financial control in Italy, financial control in Poland

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1 Introduction and sections 3 have been written by Prof. Wantoch-Rekowski. Sections 1 and 2 have been written by Dr. Tati. Conclusion has been written jointly by Prof. Wantoch-Rekowski and Dr. Tati; article was produced as part of the BETKOSOL research project. The BETKOSOL project (Grant Agreement (GA) No: 101015421) was co-funded by the European Union HERCULE III programme; research on the protection of EU financial interests in Poland was also carried out as part of the Centre for Democracy, Accountability and Representation (CEDAR) project.

## Introduction

The disbursement of public funds inevitably involves the risk that those involved may breach the rules that indicate who must benefit from the support. If the law is infringed when funds from the European Union budget (EU funds) are disbursed, the consequences are defined by EU law. Its provisions oblige the national authorities of the Member States to recover sums of money spent in breach of the law and to impose administrative and criminal penalties. In doing so, Member States apply EU rules and their own national rules.<sup>2</sup>

When the spending of EU funds in a Member State is associated with minor or major irregularities, procedures must be in place to detect and deal with these. Furthermore, the literature indicates that the EU and the Member States are obliged to combat fraud and illegal activities concerning the spending of EU funds; therefore measures to combat fraud and irregularities should be taken.<sup>3</sup>

To apply sanctions for the misuse of EU funds, it is necessary to identify irregularities, which are often uncovered by applying control procedures. Controls during the initial phase of EU spending can contribute to increased effectiveness; then proposals and changes can be used to achieve better results.<sup>4</sup> Controls carried out during the disbursement of EU funds avoid errors, while *ex post* controls provide lessons for the future.

According to Article 325 of the Treaty on the Functioning of the European Union (TFEU), protecting the Union's financial interests is the shared responsibility of the EU and the Member States.<sup>5</sup> The responsibilities of the Member States include setting up and ensuring the functioning of management and control systems, carrying out activities to prevent and detect irregularities, correcting and recovering amounts incorrectly paid and reporting irregularities to the European Commission.<sup>6</sup>

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2 J. Łacny, Sankcje za nieprawidłowe wydatkowanie funduszy Unii Europejskiej – rekonstrukcja stanu prawa i orzecznictwa [Sanctions for Irregular Spending of European Union Funds – Reconstruction of the State of the Law and Jurisprudence], 'Białostockie Studia Prawnicze' 2014, vol. 15, p. 41.

3 A. Borodo, Prawo budżetowe [Budget Law], Warsaw 2008, p. 142; C. Kosikowski, Prawo finansowe w Unii Europejskiej [Financial Law in the European Union], Bydgoszcz-Warsaw 2008, p. 105.

4 B. Błasiak-Nowak, M. Rajczewska, Kontrola zaplanowanych rezultatów wydatkowania środków unijnych – budżet UE w obszarze polityki spójności na lata 2014–2020 [Control of Planned Results of EU Funds Disbursement – EU Budget in the Area of Cohesion Policy for 2014–2020], 'State Control' 2016, no. 3, p. 37.

5 Consolidated version: O.J. EU C 326, 26.10.2012.

6 A.P. Chociej, P. Woltanowski, Kontrola realizacji programów operacyjnych przez Instytucje Zarządzające w kontekście ochrony interesów Finansowych Unii Europejskiej [Control of the Implementation of Operational Programmes by Managing Authorities in the Context of the Protection of the Financial Interests of the European Union], 'Białostockie Studia Prawnicze' 2019, vol. 24, no. 3, p. 69.

Łacny has illustrated the control system for the disbursement of EU funds in the form of a pyramid, the base of which is formed by the controls performed by the Member States (management controls performed at the beneficiary level by the managing authorities), while the apex signifies the controls on the implementation of the EU budget by the European Court of Auditors.<sup>7</sup>

This study aims to analyse the concepts adopted for controlling the expenditure of EU funds through the example of two Member States: Italy and Poland. These states have been among the largest beneficiaries of EU funds for many years, so it is worth analysing the mechanisms for controlling the spending of funds in these two countries. The authors have assumed that, despite different national regulations in the two Member States based on their specificities and functioning legal systems, the principle of assimilation provided for by Article 325 TFEU can be guaranteed.

This article is based on research that the authors carried out within the framework of the BETKOSOL project (Grant Agreement No: 101015421), which was funded by the European Union HERCULE III programme. The authors mainly used the dogmatic-legal and institutional methods, based on the analysis of legal acts and administrative organisation.

## 1. Outline of EU Regulations

First, it is relevant to briefly recall the Multiannual Financial Framework (MFF), and especially the EU annual budget, which sets out EU policies.<sup>8</sup> These include the cohesion policy and the allocation of its main instruments, the European Structural and Investment Funds (ESIFs). The MFF can be considered the long-term budget of the EU.<sup>9</sup> For each funding period, a specific set of regulations is approved to set out the financial and reporting rules for the fair management of EU resources. Thus, public administrations and private persons inside Member States must implement them while serving as managing or audit authorities.<sup>10</sup> Normally, besides the so called General financial regulation (Regulation (EU, Euratom) No. 2018/1046) and for each funding period under the ESIFs, a common provision regulation is adopted, to-

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7 J. Łacny, *Ochrona interesów finansowych w dziedzinie polityki spójności* [Protection of Financial Interests in the Field of Cohesion Policy], Warsaw 2010, p. 337.

8 For more details on the contents of this section, see A. Sandulli, A. Nato, M. Bellacosa, M. De Bellis, E. Tati (eds.) *The Past and Future of EU Financial Interests*, Work Package 1 – Deliverable 2, Betkosol Project, Luiss University, Rome 2021, *passim*.

9 R. Kaiser, *The Multiannual Financial Framework: Reforms and Path-Dependent Development of the EU Budget*, (in:) L. Zamparini, U. Villani-Lubelli (eds.) *Features and Challenges of the EU Budget*, Cheltenham 2019, pp. 73–92.

10 J. Bachtröglér, U. Fratesi, G. Perucca, *The Influence of the Local Context on the Implementation and Impact of EU Cohesion Policy*, 'Regional Studies' 2020, vol. 54, no. 1, pp. 21–34.

gether with norms specifically dedicated to each fund.<sup>11</sup> However, not all EU actions are funded by the MFF and the EU annual budget. Indeed, the recent NextGenerationEU programme (NGEU) has been established outside these tools, and Regulation (EU) No. 2020/2094, which created the European Union Recovery Instrument, is based on Article 122 TFEU.<sup>12</sup> The main instrument, the Recovery and Resilience Facility, has its own regulations with ad hoc financial management rules and governance (Regulation (EU) No. 2021/241).<sup>13</sup> It must be remembered that Regulation (EU) No. 2020/2092, on the general regime of conditionality for the protection of the EU budget, establishes a new legal instrument to protect the financial interests of the EU from violations of the rule of law.<sup>14</sup>

Second, EU norms are provided to regulate the function of controlling and fighting against irregularities and fraud. Alongside these regulations is a network of institutional actors, mainly the EU Anti-Fraud Office (OLAF), the European Court of Auditors (ECA), Eurojust, Europol, and now the European Public Prosecutor's Office (EPPO) (established in 2017 and operative since 2021), as well as, according to the sector, institutions such as the European Central Bank and the European Investment Bank.<sup>15</sup> A specific authority against money laundering shall be operative in the fu-

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- 11 A. D'Alfonso, *Multiannual Financial Framework for the Years 2021 to 2027: The Future of EU Finances*, 'European Parliamentary Service Research' 2021, pp. 1–22. Cf. L. Polverari, *The New Ambitions for 2014–2020 European Structural and Investment Funds Evaluation: Pouring Water in a Leaking Container?* 'European Structural and Investment Funds Journal' 2016, vol. 4, no. 2, pp. 59–67; R. Crescenzi, U. Fratesi, V. Monastiriotis, *Back to the Member States? Cohesion Policy and the National Challenges to the European Union*, 'Regional Studies' 2020, vol. 54, no. 1, pp. 5–9; R. L. Bubbico, J. Langthaler, *The Evolution of Thematic Concentration within Cohesion Policy*, 'European Structural & Investment Funds Journal' 2015, vol. 3, no. 1, pp. 3–11.
  - 12 P. Dermine, *The EU's Response to the COVID-19 Crisis and the Trajectory of Fiscal Integration in Europe: Between Continuity and Rupture*, 'Legal Issues of Economic Integration' 2020, vol. 47, no. 4, pp. 337–358.
  - 13 F. Corti, J. Núñez Ferrer, *Steering and Monitoring the Recovery and Resilience Plans: Reading between the Lines*, CEPS 'Recovery and Resilience. Reflection Papers' 2021, no. 2, pp. 1–20.
  - 14 J. Bachtler, C. Mendez, *Cohesion and the EU Budget: Is Conditionality Undermining Solidarity?* (in:) R. Coman, A. Crespy, V. Schmidt (eds.), *Governance and Politics in the Post-Crisis European Union*, Cambridge 2020, pp. 121–139; A. Baraggia, *The New Regulation on the Rule of Law Conditionality: A Controversial Tool with Some Potential*, 'IACL-AIDC Blog', 22 December 2020; T. Tridimas, *Editorial Note: Recovery Plan and Rule of Law Conditionality: A New Era Beckons?* 'Croatian Yearbook of European Law & Policy' 2020, vol. 16, no. 1, pp. vii–xxi.
  - 15 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (O.J. L 198/29, 28.07.2017); Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (O.J. L 283/1, 31.10.2017). See T. Rafaraci, *Brief Notes on the European Public Prosecutor's Office: Ideas, Project and Fulfilment*, (in:) T. Rafaraci, R. Belfiore (eds.), *EU Criminal Justice*, Cham 2019, pp. 157–163.

ture.<sup>16</sup> OLAF was the main anti-fraud controller at the EU level until the EPPO was established,<sup>17</sup> and has been reformed recently.<sup>18</sup> Cooperation between OLAF and the EPPO does not have a legal basis in the Lisbon Treaty.<sup>19</sup> In fact, Article 86(1) of the TFEU only mentions the EPPO's cooperation with Europol and Eurojust.<sup>20</sup>

## 2. Regulations and governance in the Italian legal system

### 2.1. Introduction

The importance of the cohesion policy (CP) for Italy, in terms of financial support, is confirmed under the MFF 2021–2027.<sup>21</sup> Hence the governance system for the ESIFs in particular is well worth analysing in terms of protecting the EU's financial interests.<sup>22</sup> The Italian legislator reformed the institutional architecture in support of the CP at the beginning of the MFF 2014–2020. Article 10, Decree Law No. 101/2013 provides that the administrative functions of the CP are allocated between the Pres-

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16 Anti-Money Laundering and Countering the Financing of Terrorism legislative package, [https://finance.ec.europa.eu/financial-crime/eu-context-anti-money-laundering-and-countering-financing-terrorism\\_en](https://finance.ec.europa.eu/financial-crime/eu-context-anti-money-laundering-and-countering-financing-terrorism_en) (6.09.2022).

17 Regulation (EC) No. 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (O.J. L 136, 31.05.1999) and Council Regulation (Euratom) No. 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OCAF) (O.J. L 136, 31.05.1999). Both were later repealed with European Parliament and Council Regulation 883/2013 of 11 September 2013, concerning the investigations carried out by OLAF and repealing Reg. 1073/1999 and Reg. 1074/1999 (O.J. L 248/1, 18.09.2013). M. Hofmann, S. Stoykov, OLAF – 20 Years of Protecting the Financial Interests of the EU, 'Euclid: The European Criminal Law Associations' Forum' 2019, no. 4, pp. 268–271. Cf. G. Kratsas, A Case for OLAF: The Place and Role of the Anti-Fraud Office in the European Union Context, 'European Public Law' 2012, vol. 18, no. 1, pp. 65–97.

18 Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No. 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations (O.J. L 437, 28.12.2020).

19 A. Weyembergh, C. Brière, The Future Cooperation between OLAF and the European Public Prosecutor's Office, 'New Journal of European Criminal Law' 2019, no. 9, pp. 62–82, especially p. 71.

20 F. Ruggieri, Eurojust and the European Public Prosecutor's Office: Introduction to a Historic Reform, (in:) T. Rafaraci, R. Belfiore (eds.), EU Criminal Justice, *op. cit.*, pp. 181–189.

21 Final Decision, OpenCoesione web portal, [https://opencoessione.gov.it/en/adp\\_2021\\_2027/](https://opencoessione.gov.it/en/adp_2021_2027/) (6.09.2022). For the previous cycle, see C. Notarmuzi, Le politiche di coesione e la gestione dei fondi strutturali europei nella programmazione 2014–2020 [Cohesion policies and the management of the European structural funds in the 2014–2020 programming], 'Giornale di diritto amministrativo' 2014, no. 6, pp. 567–571. Cf. G. P. Manzella, Una politica influente. Vicende, dinamiche e prospettive dell'intervento regionale Europeo [An influential policy. Events, dynamics and perspectives of European regional intervention], Bologna 2020, *passim*.

22 Special Issue on Audit and Irregularities, Fraud and Corruption, 'European Structural and Investment Funds Journal' 2019, vol. 7, no. 3, pp. 103 ff.

idency of the Council of Ministers (Presidenza del Consiglio dei Ministri, PCdM) and the Agency for Territorial Cohesion (Agenzia per la coesione territoriale, ACT). Along the institutional chain, according to the kinds of operational programmes and/or projects, different regional and local actors are involved in the shared scheme required by EU regulations, mainly national or regional managing and audit authorities. The General Inspectorate for Financial Relations with the European Union (Ispettorato Generale per i Rapporti finanziari con l'Unione Europea, IGRUE), in the Department of the General Accounting Office within the Ministry of Economy and Finance (Ragioneria generale dello Stato, MEF-RGS) has the task of guaranteeing the effectiveness and uniqueness of the actions of the audit authorities, besides being the audit authority for some national programmes.<sup>23</sup>

The example of indirect fund management illustrates how the protection of the EU's financial interest in the country could be integrated with the protection of the national financial interest.

## **2.2. The internal system of controls and the role of some special external controls on the management of EU resources: Criticalities of the public procurement sector**

The Italian system of administrative controls has many interposed layers.<sup>24</sup> In most cases, these controls are targeted at sound financial management of public resources.<sup>25</sup> Since the end of the 1990s, there have been four main kinds of control over the internal structure of public organisations: the evaluation of administrative and financial lawfulness, *ex post* internal management control, the control and evaluation of public managers and strategic control (Legislative Decree No. 286/1999).

At this point, it is important to highlight how financial relations with the EU constitute an important area of activity for the National Court of Auditors (NCA), both regarding the exercise of its control function and with reference to 'jurisdic-

23 See A. Sandulli, E. Tati, A. De Becker, M. Serowanec, A. Nato (eds.), *The Protection of EU Financial Interests across Four National Legal Systems: A Comparative Perspective*, Work Package 2 – Deliverable 1, Betkosol Project, Luiss University, Rome 2021, especially tasks 1 (E. Tati) and 4 (E. Birritteri, E. Tati), for more details on the contents of this section.

24 See amongst others M. De Benedetto, *Controlli [dir. amm.] [Controls [Ad. Law]*, *Enciclopedia Treccani* 2017, online, [https://www.treccani.it/enciclopedia/controlli-dir-amm\\_%28Diritto-on-line%29/\(30.09.2022\)](https://www.treccani.it/enciclopedia/controlli-dir-amm_%28Diritto-on-line%29/(30.09.2022)); E. D'Alterio, *I controlli sull'uso delle risorse pubbliche [Controls on the use of public resources]*, Milan 2015, *passim*; G. D'Auria, *I controlli [Controls]*, (in:) S. Cassese (ed.), *Trattato di diritto amministrativo [Handbook on Administrative Law]*, Milan 2020, pp. 1217–1223; G. Della Cananea, *Indirizzo e controllo della finanza pubblica [Steering power and controls of public finance]*, Bologna 1996, *passim*; S. Cassese (ed.), *I controlli nella pubblica amministrazione [Controls the public administration]*, Bologna 1993, *passim*; M. S. Giannini, *Controllo: nozione e problemi [Control: notion and critical issues]*, 'Rivista trimestrale diritto pubblico' 1974, pp. 1262–1268.

25 E. D'Alterio, *I controlli...*, *op. cit.*, *passim*.

tional powers'. Regarding the former, the functions of the NCA are based on Article 100 of the Italian Constitution, and better specified in Law No. 20/1994, which calls for providing feedback on public management performance in relation to funds of European origin (Article 3.4). Hence, the NCA is responsible for the unitary examination of the phenomenon of irregularities and fraud, monitoring trends over time and assessing the management of underlying proceedings, with the aim of identifying critical and risk situations so that the administrations can autonomously implement self-correction procedures. The jurisdictional function intervenes to address unlawfulness, while the control function operates with regard to the examination of the phenomenon as a whole. Thus the latter involves prevention, verification and contrast. With specific reference to European funds, the control function is also entrusted to the Control Section for Community and International Affairs, which reports to Parliament at least annually. It carries out specific inquiries on the management of European funds, and it collaborates with the ECA and with other EU institutions in the implementation of international treaties and agreements.

Part of the NCA's mission is to monitor and evaluate the entire system of internal controls planned and fulfilled by each public administration. It does this as an external and *ex post* control.<sup>26</sup> The internal control system is extremely relevant for European indirect fund management, for example, in the way it overlaps the systems of management and controls required by relevant EU regulations to managing authorities. Hence, Italian administrations adapt the instruments available at the national level for addressing EU regulations in shared management.<sup>27</sup>

What stands out is the special discipline regarding public procurement, both for the adjudication phase and the execution of the contract (i.e. the control that the products and services planned will be effectively provided or that they respect the agreed quality parameters). These checks can only be carried out *in loco*. Considering the importance of the public procurement sector in the realisation of programmes and projects under EU funding, both in terms of spending capacity and incidence of irregularities and fraud, it is important to remember the role of the National Anti-corruption Authority (Autorità anti corruzione, ANAC).<sup>28</sup>

26 See E.F. Schilzter (ed.), *Il sistema dei controlli interni nelle pubbliche amministrazioni* [The system of internal control in public administrations], Milan 2002, *passim*.

27 A.M. Porras-Gómez, *The Evolution of the Internal Control System for the Structural Funds: Between the European Commission and National Authorities*, (in:) P. Stephenson, M.-L. Sánchez-Barrueco, H. Aden (eds.) *Financial Accountability in the European Union: Institutions, Policy, Practice*, London 2020, pp. 145–160; E. Domorenok, *Financial Accountability and the Quality of Performance in EU Cohesion Policy: The Case of Italy*, (in:) *idem*, pp. 160–176.

28 A. Sandulli, E. Tati, A. De Becker, M. Serowaniec, A. Nato (eds.), *The Protection...*, *op. cit.*, p. 46. ANAC's supervision and control of public contracts and activities are specified by Article 213 of the Public Procurement Code (Legislative Decree No. 150/2016); N. Parisi, *The Role of the Italian National Anticorruption Authority: A Systematic Perspective in Disagreement to the Vulgata Opinion*, 'DPCE Online' 2020, vol. 45, no. 4, p. 4631–4667. Cf. C. Giorgiantonio, F. Decaro-

A recent collaboration between ANAC, IGRUE and ACT, agreed in 2018 in view of the 2021–2027 cycle, appoints ANAC as the lead administration in charge of drafting the final report to be presented to the European Commission on the subject of control mechanisms for the public procurement market. In December 2021, ANAC signed a new Memorandum of Understanding (MoU) with the National Recovery and Resilience Facility (NRRF)'s Steering Committee or (Cabina di regia) to implement a qualification system for contracting authorities and central purchasing bodies. The MoU included additional forms of collaboration, such as the availability of information in the national database of public contracts, which will be discussed later. Moreover, in February 2022, an MoU was also confirmed between the MEF-RGS and ANAC regarding the collaboration between the General Inspectorate of Public Finance and ANAC to carry out inspections regarding the regularity and cost effectiveness of tendering procedures and the execution of public contracts.

### **2.3. The importance of transparency and anti-corruption actions, together with the performance cycle and the conduct of civil servants and public managers**

Besides its role in public procurement, ANAC was created with its current features by Article 19, Decree Law No. 90/2014 to play a key role in concerning the coordination, rule-making and supervision of transparency and anti-corruption measures at all administrative levels. It does this in coordination with other national actors assigned to controlling functions, such as the NCA.<sup>29</sup> Some anti-corruption instruments constitute an important part of the 'self-evaluation' by public administrations and thus of the first-level controls under the ESIFs.<sup>30</sup> The ethical code is an instrument adopted by the National Public Labour Code (Article 54, Legislative Decree No. 165/2001), and it can be specified regarding deontological behaviours in the management of European programmes. Also, the discipline of incompatibilities for civil servants, that means the general ban on combining private and public assignments, was planned by the 2012 national anti-corruption reform and implemented through Legislative Decree No. 39/2013 and modification of the Public Labour Code. The aim of the reform is to guarantee fair public management and to avoid conflicts of interest between politics and administration, public and private or legal and illegal.

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lis, Corruption Red Flags in Public Procurement: New Evidence from Italian Calls for Tenders, 'Questioni di Economia e Finanza: Occasional Papers' 2020, no. 544, pp. 1–36.

29 D.L. Feldman, The Efficacy of Anti-Corruption Institutions in Italy, 'Public Integrity' 2020, vol. 22, no. 6, pp. 590–605; F. Di Mascio, M. Maggetti, A. Natalini, Exploring the Dynamics of Delegation over Time: Insights from Italian Anti-Corruption Agencies (2003–2016), 'Policy Studies Journal' 2018, vol. 48, no. 4, pp. 367–400; M. De Benedetto, Corruption and Controls, 'European Journal of Law Reform' 2018, vol. 17, no. 4, pp. 479–501.

30 For a European overview, see M. C. Pantiru, Ethics: An Integral Part of the Organisational Culture in the European Public Administrations, National Agency of Civil Servants, Romania, EUPAN Survey during the Romanian Presidency of the Council of the European Union 2019, *passim*.



Great efforts have also been made through the increased role of disciplinary administrative sanctions (Article 55 ff., Public Labour Code).<sup>31</sup>

Internal efforts made by each public administration to fight corruption and provide transparency and good performance are programmed and synthesised by two three-year plans that are updated annually: the Anti-corruption and Transparency Plan (Piano triennale per la trasparenza e anti corruzione) and the Performance Plan (Piano della performance). The latter is also coordinated with the management and strategic controls mentioned above, especially for evaluating public managers. The two plans work together, if one thinks that the fight against corruption and non-transparency depends on the efforts made by the administration itself (primarily through external controls).<sup>32</sup> Not accidentally, Decree Law No. 81/2021, one of the recruitment decrees under the NRRP process of implementation, introduced a new integrated plan, known as Integrated Plan of Activities and Organization (Piano integrato delle attività e dell'organizzazione) (Article 6), and the two plans (together with others) have been merged into a single document.

#### **2.4. The Anti-Fraud Committee in the Department for European Affairs and the role of the Financial Police**

The Italian Anti-Fraud Committee (Comitato per la lotta contro le frodi nei confronti dell'Unione europea, COLAF) was established by Article 76, Law No. 142/1992 and confirmed by Article 54, Law No. 234/2012. According to Article 3.4 of Regulation (EU) No. 883/2013 concerning investigations conducted by OLAF, COLAF has been designated as the central anti-fraud coordination service for Italy. COLAF operates in the Department for European Policies inside the PCdM (Article 3, Presidential Decree No. 91/2007 and Article 54, Law No. 234/2012). It is chaired by the political authority responsible for European affairs (the Minister or Secretary of State) or by his/her delegate.<sup>33</sup> The mixed composition of the committee reflects the involvement of different agencies, bodies and police corps cooperating to support OLAF at the national level.

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31 See amongst others E. Carloni, I codici di comportamento [Deontological Codes], 'Il lavoro nelle pubbliche amministrazioni' 2017, no. 1, online, [https://www.lavoropubblicheamministrazioni.it/codici\\_di\\_comportamento](https://www.lavoropubblicheamministrazioni.it/codici_di_comportamento) (last access September 30, 2022), *passim*; E. D'Alterio, I codici di comportamento e la responsabilità disciplinare [Deontological codes and disciplinary responsibility], (in:) B.G. Mattarella, M. Pelissero (eds.), *La legge anticorruzione* [The Anti-corruption Law], Turin 2013, pp. 211–233.

32 M. Delsignore, M. Ramajoli, *La prevenzione della corruzione e l'illusione di un'amministrazione senza macchia* [Prevention of the corruption and the illusion of a spotless public administration], 'Rivista Trimestrale di Diritto Pubblico' 2019, no. 1, pp. 61–77.

33 S. Allegrezza, Italy, (in:) M. Luchtman, J. Vervaele (eds.), *Report Investigatory Powers and Procedural Safeguards: Improving OLAF's Legislative Framework through a Comparison with Other EU Law Enforcement Authorities (ECN/ESMA/ECB)*, Utrecht 2017, pp. 129–152.

Among its several tasks, COLAF manages the Irregularity Management System of the European Commission; provides advice and coordination at the national level against fraud and irregularities in the fields of taxation, common agricultural policy and the ESIFs; monitors the data flow on irregularities and fraud concerning European funds and on their recovery in cases of misuse; and reports to the European Commission according to Article 325 TFEU. In addition to these duties, the national legislation provides that pursuant to Article 54 of the aforementioned Law No. 234/2012, COLAF prepares a specific annual report for the Italian parliament in which it illustrates the initiatives taken, the measures adopted, the results achieved and the national strategy to protect the EU's economic and financial interests. Moreover, through COLAF's technical secretariat, the authority facilitates the closure of dossiers relating to cases of irregularity and fraud opened with the European Commission, even if only suspected, and ensures the updating of the list of beneficiaries of European funding published on the website of the Department for European Policies, in the spirit of the European transparency initiative.<sup>34</sup> COLAF has no direct investigative authority; its function is limited to coordination. Administrative investigative powers are conferred mainly on the Nucleo Speciale Spesa Pubblica e Repressione Frodi Comunitarie (Financial Police Anti-Fraud Unit, created by Article 55, Law No. 52/1996).

### **3. Regulation and governance in the Polish legal system**

#### **3.1. Basic control procedures**

The basic national legislation regulating the spending of EU funds in Poland is the Act of 11 July 2014 on the Principles for Implementing Cohesive Policy Programmes in the Financial Perspective 2014–2020. The act serves to apply Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013. It lays down common provisions of the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund. It also repeals Council Regulation (EC) No. 1083/2006, Regulation (EU) No. 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and specific provisions concerning the investment for growth and jobs goal and repealing Regulation (EC) No. 1080/2006, Regulation (EU) No. 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No. 1081/2006, Regulation (EU) No. 1300/2013 of the European Parliament and of the Council of 17 December 2013 on the Cohesion Fund and repealing Regulation (EC)

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<sup>34</sup> *Ibidem*, p. 130.

No. 1084/2006, and Regulation (EU) No. 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal, as regards the use of the European Regional Development Fund, the European Social Fund and the Cohesion Fund under programmes implemented in the field of cohesion policy.<sup>35</sup>

Article 1(1) of this Act sets out, among other things, the rules for implementing cohesion policy programmes financed in the financial perspective 2014–2020, the entities participating in the implementation of these programmes and policies, and the modalities of cooperation between them. Furthermore, important regulations are contained in Article 22 *et seq.*, which regulate control and audit issues. Controls include verifications to check the correctness and eligibility of the expenditure of EU funds. Furthermore, according to Article 23(1), a beneficiary is obliged to undergo control and audit with regard to the correctness of project implementation carried out by the Managing Authority, the Intermediate Body, the Implementing Authority, the ETC (European Territorial Cooperation) Coordinator, the Joint Secretariat and the National Controller, as well as the Audit Authority, representatives of the European Commission and the ECA, and other entities authorised to carry out control or audit.

The finding of an irregularity triggers the obligation for the competent institution to take appropriate action, notably the imposition of a financial correction.<sup>36</sup> An enquiry precedes the finding of an irregularity and the imposition of a financial correction, during which the authority may consider the results of controls carried out by other qualified entities. The amount of the financial correction is equal to the amount of expenditure incurred incorrectly in the part corresponding to EU co-financing.

Checks on the disbursement of EU funds are carried out by the managing authority for a given operational programme, the certifying authority and the Audit Authority. The task of the managing authorities of individual operational programmes is to carry out document-based controls, e.g. on progress reports and final reports on projects. The second level of control is the certifying authorities, whose task is to verify for the European Commission that the applications for reimbursement of expenditure are correct and that the expenditure has been properly accounted for according

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35 O.J. L 347, 20.12.2013, respectively pp. 320, 289, 470, 281 and 259.

36 The principles of verification and the effects of imposing financial corrections are analysed using a specific example in S. J. Snarski, M. Martyniuk, *Zasady weryfikacji i efekty wymierzania korekt finansowych beneficjentom w związku z udzielaniem zamówień publicznych w ramach Regionalnego Programu Operacyjnego Województwa Podlaskiego 2014–2020* [Principles of Verification and Effects of Imposing Financial Corrections on Beneficiaries in Connection with the Award of Public Procurement Contracts under the Regional Operational Programme of the Podlaskie Voivodeship 2014–2020], 'Business Law Journal' 2021, no. 6, pp. 40–50.

to the principles of EU law. Finally, certifying authorities forward requests for reimbursement to the European Commission after ensuring that the appropriate controls cover the expenditure.<sup>37</sup>

On 4 June 2022, the Law of 28 April 2022 on the rules for implementing tasks financed from European funds in the financial perspective 2021–2027 entered into force.<sup>38</sup> This law also contained provisions on control and irregularities. It follows from Article 25, among other things, that control may be carried out on beneficiaries and applicants. Furthermore, the consequences of irregularities (primarily the imposition of a financial correction) are regulated in Article 26.

Uncovering irregularities and fraud is a core activity not only of the managing institutions, but also of the state control bodies, i.e. the National Fiscal Administration, the Supreme Audit Office (Najwyższa Izba Kontroli - NIK), the President of the Public Procurement Office and the Regional Chambers of Audit. As an aside, it is worth pointing out that the control activities of these entities may result in individual liability of persons who are found guilty in terms of shortcomings in spending public funds. This is a peculiar ‘official’ responsibility, which is regulated in the Act of 17 December 2004 on Responsibility for Breach of Public Finance Discipline.<sup>39</sup>

### **3.2. Control by the Head of the National Fiscal Administration**

The National Fiscal Administration also exercises power to control the spending of EU funds. According to Article 14(1) of the Act of 16 November 2016 on the National Fiscal Administration,<sup>40</sup> the tasks of the Head of the National Fiscal Administration include, first, auditing the management of funds from the budget of the European Union and non-reimbursable aid granted by the Member States of the European Free Trade Agreement (EFTA), concerning (a) the management and control system for national operational programmes and national programmes in the managing authorities; (b) the common agricultural policy system; and (c) the security of IT systems used for implementing operational programmes and the common agricultural policy; and second, supervising and coordinating the audit of the management of funds deriving from the budget of the European Union and non-reimbursable aid granted by the Member States of the EFTA, through (a) the management and control system for national programmes in the institutions of the implementation system, excluding managing authorities; (b) the management and control system for regional operational programmes and regional programmes; and (c) the operations of na-

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37 A. Walenia, *Mechanizmy kontroli wykorzystania środków Unii Europejskiej w perspektywie finansowej 2014–2020* [Control Mechanisms for the Use of European Union Funds in the Financial Perspective 2014–2020], *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu* 2019, no. 1 (544), p. 96.

38 O.J. 2022, item 1079.

39 Consolidated text: O.J. 2021, item 289, as amended.

40 Consolidated text: O.J. 2022, item 813.

tional and regional operational programmes, national and regional programmes and the common agricultural policy.

The audit and control carried out by the Head of the National Fiscal Administration can be seen as professional and independent. Their aim is to ensure Poland's uninterrupted absorption of EU funds. It is one of several entities whose objective in the area of EU finances is to ensure that EU funds are spent transparently and under EU and national regulations.

### 3.3. Audit by the Supreme Audit Office

For many years, the European Parliament has pointed out the need to increase the role of supreme audit institutions in the Member States in controlling the use of EU funds to improve the management of European Community funds and obtain additional assurance that EU funds are used correctly.<sup>41</sup> The literature indicates that the main (supreme) body for the institutional control of public finances in Poland is the Supreme Audit Office (NIK),<sup>42</sup> which is regulated by the Act of 23 December 1994.<sup>43</sup> Within the framework of the control carried out by the NIK, one can distinguish, among other things, controls carried out to detect and remove errors and irregularities in the spending of EU funds. Besides the annual audit of the execution of the state budget, during which certain issues concerning the implementation and use of European funds are examined, the NIK also examines in separate audits such issues as the correct establishment and functioning of the management and control systems set up for each operational programme, and the results of the implementation of projects carried out under these programmes and the institutional capacity of the administration for effective participation of Poland in the EU.<sup>44</sup>

Article 2 of the Act on the Supreme Audit Office sets out the catalogue of entities that the NIK may audit. It stipulates that the NIK primarily controls the activities of government administration bodies, the National Bank of Poland, state legal persons and other state organisational units. In addition, the NIK may control the activities of local government bodies, local government legal persons and other local government organisational units, and it may also control the activities of other organisational units and economic entities (entrepreneurs) to the extent to which they use state or municipal assets or funds and fulfil their financial obligations to the state.

Article 5(1) of the Act indicates that the Supreme Audit Office controls legality, economy, purposefulness and reliability. However, the criteria for control are

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41 Supreme Chamber of Control, Summary Report on the Results of the NIK Control in the Field of Utilisation of Funds from the Budget of the European Communities within the Framework of the Cohesion Policy in Poland, Warsaw 2009, KAP-462-1/2009, p. 6.

42 E. Ruśkowski, On Priority Research Problems in the Scope of Public Finance Control in Poland, 'Białostockie Studia Prawnicze' 2021, vol. 26, no. 4, p. 13.

43 Consolidated text: O.J. 2022, item 623.

44 A. Sandulli, E. Tati, A. De Becker, M. Serowaniec, A. Nato (eds.), *The Protection...*, *op. cit.*, p. 132.

different for local self-government (where control is carried out in terms of legality, economy and reliability, Article 5(2)) and the activities of organisational units and entrepreneurs (where control is carried out in terms of legality and economy, Article 5(3)).<sup>45</sup> The NIK's audit proceedings are aimed at establishing the facts of the audited entities' activities, documenting them reliably and assessing the audited activities according to the criteria set out in Article 5.

### **3.4. Control by the President of the Public Procurement Office**

The President of the Public Procurement Office, which operates based on the Act of 11 September 2019, also has a certain role in controlling the correctness of the spending of EU funds.<sup>46</sup> Based on Article 596(2)(1) of the Public Procurement Law, it is the entity (along with, among others, managing authorities and Regional Chambers of Audit) that carries out control over the awarding of public contracts. Public procurement is carried out with public funds, some or all of which may come from the European Union budget.

In connection with the conducted control, control bodies (Article 597(1) of the Public Procurement Law) cooperate by exchanging information on the control and its results. This is extremely important in the context of Article 601 of the Act. It follows from paragraph 1 that the basis for stating that the contract award procedure has not been conducted in compliance with the Act is a violation of a provision of the Act, which influences the outcome of the procedure. Paragraph 2 introduces a proviso: 'The provision referred to in paragraph 1 shall not apply in the case of control of a procedure for the award of a contract co-financed from the funds of the European Union.' This is because the disclosure of irregularities by the President of the Public Procurement Office at the level of public procurement concerning EU funds is subject to sanctions specified in separate regulations concerning the expenditure of those funds. It should be emphasised that the President of the Office audits compliance with the contracting authority's acts or omissions under the provisions of the Act.

### **3.5. Audit by Regional Chambers of Audit**

The Regional Chambers of Audit are important control entities in Poland, and function based on the provisions of the Act of 7 October 1992 on Regional Chambers of Audit.<sup>47</sup> It follows from Article 1(2) that Regional Chambers of Audit, among other things, control the financial management of the local government sector. Since a sig-

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45 M. Serowaniec, *The Polish Supreme Audit Office in the Light of International Standards of Organization and Operation of State Audit Institutions*, 'Constitutional Review' 2019, no. 1, pp. 79–80.

46 Consolidated text: O.J. 2022, item 1710.

47 Consolidated text: O.J. 2022, item 1668.

nificant part of funds from the European Union budget is spent in Poland by local government units, the role of these control bodies is not insignificant.

It follows from Article 5(1) of the Act on Regional Chambers of Audit that they control financial management based on the criterion of compliance with the law and the compliance of documentation with the facts. On the other hand, it follows from Article 5(2) that control of the financial management of local government units within the scope of government administration performed by these units based on laws or concluded agreements also takes into account the criteria of purposefulness, reliability and economy.

It is important to note that under Article 7(1), the Regional Chambers of Audit carry out a comprehensive audit of the financial management of local government units at least once every four years. A protocol is drawn up of the audit, which is signed by the audit inspector, the manager of the audited entity and the treasurer (chief accountant) of the audited entity. Based on the results, the Chamber sends to the audited entity a post-audit report, indicating the sources and causes of irregularities, their extent, persons responsible and conclusions aimed at their removal and improvement of the audited activity. The post-audit report must be submitted to the audited entity within 60 days of the audit protocol being signed.

## Conclusion

These analyses of the national contexts indicate that the control systems for the disbursement of EU funds in Italy and Poland inevitably differ. However, some of the mechanisms, which stem from EU regulations, are similar (see the example of ESIFs). In both countries, control procedures are performed by many entities. On the one hand, there are entities 'specialising' in EU funds that function in the procedures for granting, implementing and disbursing such funds. First of all, these are managing institutions and certifying and auditing institutions. On the other hand, important functions are performed by entities that deal with financial control in a broad sense (the National Fiscal Administration or Regional Chambers of Audit in Poland and the National Court of Auditors in Italy), or by entities for which financial control is only one of the aspects of activity (President of the Public Procurement Office and the Supreme Audit Office in Poland, the Anti-Corruption Authority in Italy).

There is no doubt that the Polish model of control of the financing of the expenditure of EU funds is based on the cooperation of many entities; there are no disputes of competence between them, so control can be effective. However, to improve cooperation between audit institutions, i.e. managing institutions, intermediate bodies, implementing institutions and also the minister in charge of regional development, it would be worth adding to the statutory regulation a provision specifying the rules for implementing tasks financed from EU funds, according to which these institutions

exchange, upon request, not only information about controls that have been carried out and their results, but also post-control information and control documentation. In this respect, it would be helpful to introduce applications adjusted for data exchange between individual offices.

In Italy, the set of controls on EU funds involves a complex and wide-ranging network of actors, and coordination should be improved among them and between European and national institutional actors deputed to controls (for example, valorising the role of COLAF). A strong role will be played by the availability of digital data and interoperability between datasets. Many of the actors mentioned in the sections above on Italy are relevant today, also for the implementation of the NRRP, even though special controls have been added under the influence of EU law.<sup>48</sup>

In conclusion, before the COVID-19 pandemic, most revenues were transferred from the state level and most of the expenditure was managed at the national level. In view of the NGEU and the development of its own resource strategy, this scenario is destined to partially change.<sup>49</sup> The principle of the European Commission's competence to implement the budget as an integral part of the executive function of the European institution is foreseen as having more concrete effects and wide-ranging consequences.<sup>50</sup>

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